

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

HELD BEFORE THE HONORABLE DAN AARON POLSTER

SENIOR UNITED STATES DISTRICT JUDGE

Official Court Reporter: Lance A. Boardman, RDR, CRR
United States District Court
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08:51:19 1 (In open court at 8:51 a.m.)

08:51:21 2 THE COURT: You may be seated.

08:51:22 3 Can you give me the list from yesterday with the
08:51:25 4 exhibits?

08:51:26 5 All right. I realized I didn't put on the record the
08:51:32 6 exhibits that are in without objection. So I put Nelson
08:51:40 7 08077, 07174, 41748, 20631, 08163, 08164, 08093, 07381,
08:52:01 8 20824, 08048, 07036, 07799, 20852080 -- I'm sorry, 20850 and
08:52:21 9 08037.

08:52:31 10 Then we'll deal with Tsipakis later.

08:52:49 11 All right. I reviewed the plaintiffs' response in
08:52:52 12 option to the defendants' motion to preclude testimony from
08:52:59 13 plaintiffs' fact witnesses April Caraway and Kim Fraser
08:53:05 14 about prescription opioids being a gateway to other drug
08:53:08 15 use.

08:53:11 16 I'm going to wait and see what the basis these
08:53:17 17 witnesses give for their testimony, what experience. And if
08:53:21 18 I'm satisfied that their experience qualifies them to give a
08:53:26 19 lay opinion, I will do so. I'll listen carefully to the
08:53:29 20 question. If there are objections, I'll deal with it, but
08:53:33 21 I'll deal with it on a question-by-question basis.

08:53:38 22 I think a lay witness, depending on their experience,
08:53:42 23 can give opinions commensurate with that experience, but
08:53:47 24 I'll see what it is and I'll see what the opinion's going to
08:53:50 25 be.

08:53:51 1 MR. DELINSKY: Your Honor, just two issues.

08:53:55 2 And I understand Your Honor's ruling.

08:53:58 3 MR. WEINBERGER: Your Honor, one of the
08:53:59 4 witnesses is our representative. Do you want her to step
08:54:02 5 out during this colloquy?

08:54:08 6 MR. DELINSKY: It's okay with me.

08:54:10 7 THE COURT: I don't think it matters.

08:54:12 8 MR. DELINSKY: I agree.

08:54:13 9 Depending on how the question is phrased, it could
08:54:16 10 obscure the basis. And that's part -- in other words, if --
08:54:20 11 you know, do you have information that there's a gateway
08:54:24 12 effect could elicit --

08:54:25 13 THE COURT: Well, I'm not going to allow a
08:54:27 14 leading question like that, Mr. Delinsky. I mean, first
08:54:32 15 there will be questions about the witness's position, her
08:54:36 16 experience, what she does, et cetera, and I'll determine --
08:54:40 17 you know, I'll listen to that. And then there will be a
08:54:44 18 nonleading question about an opinion. And if there's an
08:54:47 19 objection, I'll address it then.

08:54:50 20 MR. DELINSKY: Okay, Your Honor --

08:54:51 21 THE COURT: And that's how I expect it to come
08:54:52 22 in.

08:54:53 23 MR. DELINSKY: Okay. Your Honor, one -- then
08:54:55 24 moving to the opinion part of it, there's two issues I'd
08:54:58 25 like to raise on the lay opinion issue to frame the issues

08:55:02 1 as we move into those examinations.

08:55:04 2 Number one is lay opinions have -- unlike expert
08:55:08 3 opinions, lay opinions have to be based on personal
08:55:11 4 knowledge as well. They can't --

08:55:13 5 THE COURT: Well, everyone says this, but that
08:55:15 6 isn't -- that really isn't accurate, Mr. Delinsky.
08:55:19 7 Everyone's opinion, if it's your professional experience, a
08:55:24 8 lot of your professional experience is working with people,
08:55:27 9 talking to them, listening to them.

08:55:30 10 Quite frankly, scientific expert opinion is often
08:55:33 11 based on hearsay. You do a scientific study, you're
08:55:38 12 assuming that the subjects to the study are doing what
08:55:42 13 you've instructed them to do, and they tell you, yes, I
08:55:45 14 followed the instructions, I did this or that, but that's
08:55:47 15 hearsay. You're not monitoring them 24/7.

08:55:49 16 MR. DELINSKY: You're right, Your Honor --
08:55:51 17 THE COURT: There's a whole lot of embedded
08:55:53 18 hearsay.

08:55:53 19 Now, you know, you can't just relate so and so told me
08:55:57 20 this, so and so told me this.

08:55:59 21 MR. DELINSKY: No, Your Honor, you're exactly
08:56:02 22 right, but that's indicative of the difference between the
08:56:04 23 operation of Rule 701, which is lay opinion, and 702, which
08:56:09 24 is expert opinion. You are absolutely 100 percent right
08:56:12 25 that an expert opinion, an expert witness, can rely on

08:56:16 1 testimony that is hearsay or is otherwise not admissible.

08:56:20 2 But that is not the case in the case of a lay -- of a lay

08:56:24 3 witness. It has to be rationally based on the witness's

08:56:27 4 perception. That's the language of the rule.

08:56:30 5 And the cases are crystal clear that it can't be

08:56:34 6 hearsay based, that 701 isn't an avenue to launder what is

08:56:39 7 hearsay into opinion. And the cases are clear on that, Your

08:56:43 8 Honor. So I want to --

08:56:46 9 The other issue I want to raise is that lay opinions

08:56:49 10 under the plain terms of the rule cannot be based on

08:56:51 11 scientific, technical, or other specialized knowledge. They

08:56:55 12 can't be.

08:56:57 13 THE COURT: I agree with that.

08:56:59 14 MR. DELINSKY: So we are already having

08:57:02 15 opinions from experts on gateway, whether it's Caleb

08:57:06 16 Alexander, Anna Keys, Anna Lembke.

08:57:11 17 That by definition entails a determination by the

08:57:14 18 Court that the subject of that testimony is scientific,

08:57:21 19 technical, or other specialized opinions. It can't be both.

08:57:26 20 If it's appropriate for a lay opinion, it by definition

08:57:29 21 cannot be appropriate for an expert opinion and vice versa.

08:57:32 22 It's one or the other.

08:57:33 23 So we have two problems here, one the hearsay and,

08:57:36 24 number two --

08:57:36 25 THE COURT: Well, I will see what experience

08:57:39 1 the witness has and what specific questions they're asked.
08:57:42 2 And I agree, I'm not going to let either of these witnesses
08:57:46 3 give expert testimony or phrased in a way that an expert
08:57:49 4 would answer the question, you're right, I'm not going to
08:57:52 5 permit that.

08:57:55 6 So I'll see what the experience is and exactly what
08:57:58 7 the question that's asked.

08:58:00 8 MR. MAJORAS: Your Honor, John Majoras.

08:58:02 9 Just related to that, I guess I'll just apologize in
08:58:05 10 advance if this were to occur, but if, as Mr. Delinsky
08:58:07 11 pointed out, the witness were to -- regardless of the
08:58:11 12 question, were to venture into this area, we will object
08:58:14 13 immediately, and I apologize if that will interrupt, but I
08:58:16 14 think it's appropriate. We think it's -- any mention of it
08:58:19 15 is highly prejudicial.

08:58:21 16 THE COURT: If you think the witness is
08:58:41 17 venturing into an area that's objectionable, obviously you
08:58:26 18 should object. If I see it, I'll try and stop it, but, you
08:58:29 19 know, that's what diligent counsel is supposed to do, be on
08:58:32 20 top of it.

08:58:33 21 MR. MAJORAS: Thank you.

08:58:33 22 THE COURT: I don't have a problem with that.

08:58:45 23 I guess earlier in the morning there was a motion to
08:58:48 24 preclude testimony from David Cutler or certain opinions
08:58:53 25 from David Cutler. I'm sure I'll get a response. When does

08:58:58 1 Mr. Cutler --

08:59:02 2 MR. LANIER: He'll be the next witness after
08:59:05 3 Ms. Polster, Your Honor. Oh, no, no, no. No, David Cutler
08:59:09 4 will be the next witness after Tasha Polster.

08:59:13 5 Frankly, Judge, I think most of the questions that
08:59:15 6 they're objecting to aren't ones I plan on asking anyway.

08:59:18 7 THE COURT: All right. Well, then that's one
08:59:19 8 way to deal with it. So, okay.

08:59:19 9 MR. LANIER: So I'll look at it to give a
08:59:22 10 response but --

08:59:23 11 THE COURT: Well, that's one way to deal with
08:59:28 12 it.

08:59:28 13 MR. LANIER: I'm not going to have him on the
08:59:29 14 stand long, and I've got questions that I think are
08:59:32 15 unobjectionable, and I don't think it will be a problem.

08:59:35 16 THE COURT: All right. Well, then we'll put
08:59:40 17 that aside.

08:59:40 18 And then I still need a response from the plaintiffs
08:59:42 19 on the motion to preclude testimony from Nicole McCallion.
08:59:47 20 I guess she's slated to be on --

08:59:51 21 MR. LANIER: She would like to take the stand
08:59:53 22 Friday, Your Honor. And I know that our briefing people are
08:59:55 23 working on it as we speak.

08:59:57 24 THE COURT: All right. That's fine. I just
08:59:59 25 didn't want to forget about that.

09:00:09 1 All right. My staff was alerting me there was some
09:00:12 2 issue about a witness who is going to be testifying by
09:00:18 3 video. Is that Mr. Chunderlik?

09:00:20 4 MS. SULLIVAN: Yes, Your Honor.

09:00:23 5 THE COURT: All right. With the fact that he
09:00:24 6 didn't want anyone present with him handing the exhibits, so
09:00:29 7 the exhibits will be shown to him remotely. And when that
09:00:32 8 happens, because of the technology, the exhibit will be very
09:00:36 9 large and he will be very small. If that's the way it is,
09:00:44 10 that's the way it is. I don't have a real problem with it
09:00:50 11 unless someone has a way to resolve that, we'll just do
09:00:53 12 that, and I'll just tell the jury that that's the way the
09:00:57 13 technology works.

09:00:58 14 MS. SULLIVAN: Thank you, Your Honor. We're
09:00:59 15 working on a way to resolve it, but if not, thank you, Your
09:01:01 16 Honor.

09:01:01 17 THE COURT: All right. I mean, it's not --
09:01:05 18 it's not the end of the world. We've all done a whole a lot
09:01:09 19 of things on Zoom and remotely the last year and a half, I'm
09:01:12 20 sure the jurors have, and they can, you know, see two
09:01:16 21 screens at once, okay? And again, they'll hear -- they'll
09:01:19 22 hear the testimony, and it's not critical that they, you
09:01:24 23 know, see the face large the whole time.

09:01:27 24 MR. LANIER: Your Honor, Mark Lanier for
09:01:29 25 plaintiffs.

09:01:30 1 Let the Court know that we are working very
09:01:32 2 cooperatively with Ms. Sullivan, and the parties will work
09:01:37 3 together on that through Special Master Cohen. But we have
09:01:43 4 an aligned interest, both sides want the same net effect,
09:01:46 5 and so there's no real discord. We've just got to figure
09:01:49 6 out the best way to do it, and we commit to doing that with
09:01:51 7 the Court.

09:01:51 8 THE COURT: If you can do it, fine, but if you
09:01:53 9 can't, I don't want people, you know, up all night. I mean,
09:01:56 10 it's not so terrible that, you know, we have a split screen
09:02:00 11 and if the face is small during the time when there's a
09:02:03 12 document up there.

09:02:05 13 I mean, and knowing that, then I would, you know,
09:02:10 14 obviously caution counsel to only have the document up so
09:02:14 15 long as it's essential and then take it down so that the
09:02:19 16 rest of the time the witness's face is front and center.

09:02:24 17 It's not -- this jury can handle that, trust me.
09:02:30 18 They've handled everything else, they can handle that.

09:02:33 19 MS. SULLIVAN: Thank you, Your Honor.

09:02:37 20 THE COURT: Okay. I guess if all the jurors
09:02:39 21 are here, we can start.

09:02:40 22 MR. LANIER: The last thing, Your Honor, if I
09:02:42 23 could, we got a notice of a number of exhibits that are
09:02:46 24 going to be used supposedly in the direct examination of
09:02:52 25 this witness, Ms. Polster. And among those exhibits, for

09:02:56 1 example, are four PowerPoint presentations of Joe Rannazzisi
09:03:05 2 which the parties objected to us even using one when
09:03:12 3 Joe Rannazzisi on the stand and the witness has said she
09:03:14 4 only went to one of his presentations and didn't really
09:03:17 5 remember it on direct. And I don't understand a number of
09:03:21 6 their documents but including how they plan on using
09:03:24 7 exhibits that they would not let me use with Joe Rannazzisi
09:03:28 8 because they were hearsay, and yet they plan on using it
09:03:31 9 with a witness who has no basis of proving it up.

09:03:34 10 There are a number of other documents that she's not
09:03:36 11 on, she's a fact witness, and we don't understand how
09:03:39 12 they're going to be using those on direct when the
09:03:44 13 limitations exist that exist in this court.

09:03:48 14 And we just want to say that because we don't want to
09:03:50 15 interrupt everything.

09:03:51 16 THE COURT: Well, I try and keep the same
09:03:53 17 strike zone for both sides. And you can show a witness, in
09:04:00 18 my view, almost anything and ask them if they know anything
09:04:02 19 about it. And if they do, you can ask relevant questions.
09:04:06 20 If they don't, generally that ends it.

09:04:11 21 MR. LANIER: Well, our concern there is, for
09:04:13 22 example, I asked that question of Joe Rannazzisi about the
09:04:15 23 PowerPoints he prepared, and the answer was, well, yeah, I
09:04:19 24 prepared these. And yet I wasn't allowed to use them, I
09:04:22 25 wasn't allowed to show them except for certain pages of only

09:04:25 1 one.

09:04:28 2 MS. SWIFT: Your Honor, the witness testified
09:04:29 3 yesterday that she had attended one of Mr. Rannazzisi's
09:04:32 4 presentations.

09:04:33 5 THE COURT: If she attended a presentation,
09:04:34 6 she can certainly be examined about it. And Mr. Rannazzisi,
09:04:40 7 where -- if there was any evidence that he presented
09:04:45 8 anything where at least one representative of one of the
09:04:49 9 defendants was present, I allowed the testimony.

09:04:55 10 MR. LANIER: You allowed the testimony about
09:04:58 11 the presentation, and you allowed certain pages of the
09:05:02 12 exhibit to be used of one presentation.

09:05:04 13 Our concern is they have four --

09:05:08 14 THE COURT: Well, let's what we're going to
09:05:10 15 do. And again, I'm going to apply the same ground rules to
09:05:13 16 them that I applied to the plaintiffs.

09:05:15 17 MS. SWIFT: Thank you, Your Honor.

09:05:16 18 THE COURT: And it's going to depend on, you
09:05:20 19 know, if the witness has knowledge of it. If she does, she
09:05:23 20 can testify about it. If she doesn't, that tends, we'll
09:05:27 21 move on to another document. Okay.

09:07:58 22 (Jury present in open court at 9:07 a.m.)

09:08:04 23 THE COURT: Good morning, ladies and
09:08:05 24 gentlemen. Please be seated.

09:08:07 25 And Mr. Lanier, you may continue with your

09:08:10 1 examination.

09:08:11 2 And Ms. Polster, I just want to remind you you're

09:08:13 3 under oath from yesterday.

09:08:16 4 NATASHA POLSTER

09:08:16 5 - - - - -

09:08:17 6 CROSS-EXAMINATION (CONT'D)

09:08:17 7 BY MR. LANIER:

09:08:18 8 Q Good morning, Ms. Polster.

09:08:19 9 A Good morning.

09:08:19 10 Q Good morning, ladies and gentlemen.

09:08:20 11 Your Honor, may it please this Honorable Court.

09:08:26 12 Ms. Polster, we left off yesterday, and we were
09:08:32 13 talking about the era where you had sent an e-mail of
09:08:42 14 instructions out on how to handle certain things. And then
09:08:47 15 I jumped forward to a 2018 situation with Mr. Yaeger. I'd
09:08:52 16 like to now go back to the timeline where we were in that
09:08:56 17 2014 to 2015 era. Okay?

09:09:00 18 A Okay.

09:09:03 19 Q And one of the questions I had asked you about was
09:09:05 20 going yesterday as far back as 2013 with the target drug
09:09:11 21 good faith dispensing. And I asked you if you remembered
09:09:15 22 whether or not you told people whether it was appropriate to
09:09:23 23 delete information in the comments section of their computer
09:09:27 24 programs that talked about whether or not prescriptions
09:09:31 25 needed data on the customer.

09:09:34 1 Remember that?

09:09:35 2 **A** Yes.

09:09:35 3 **Q** And in that regard, I had a chance to pull another
09:09:43 4 exhibit which we'll mark as Plaintiffs' 25621. And we're
09:09:50 5 moving forward into 2014 on that issue now. But I'll ask
09:09:59 6 Ms. Fleming and Ms. Lanier to pass those and I'll ask a question
09:10:04 7 about them.

09:10:04 8 Do you have plaintiffs' 25621 in front of you?

09:10:08 9 **A** Yes.

09:10:09 10 **Q** And can you confirm this is an e-mail, the top one is
09:10:11 11 to you, but the one right below it is from you. Correct?

09:10:15 12 **A** Yes.

09:10:15 13 **Q** And then the very bottom e-mail is to you.

09:10:20 14 And the one that is to you is dated May 21, 2014,
09:10:28 15 correct?

09:10:29 16 **A** Yes.

09:10:33 17 **Q** And it's about comments on good faith dispensing.

09:10:38 18 Do you see that as well?

09:10:39 19 **A** Yes.

09:10:39 20 **Q** It says, "I wanted to reach out to you about your
09:10:45 21 thoughts" -- let me see if I can help this -- "about your
09:10:51 22 thoughts on the good faith dispensing comments. The
09:10:57 23 comments section is getting full for many patients and
09:11:00 24 requiring the deletion of comments (not just good faith
09:11:06 25 dispensing but other comments as well). Especially in the

09:11:11 1 Florida area."

09:11:14 2 Do you see this?

09:11:15 3 **A** Yes.

09:11:18 4 **Q** "Is it okay to give direction around purging of old
09:11:23 5 good faith dispensing comments? I wanted to run this past
09:11:25 6 you before anything was done."

09:11:28 7 You see that as well?

09:11:29 8 **A** Yes, I do.

09:11:30 9 **Q** So to frame this problem, you understand the
09:11:38 10 importance of good faith dispensing comments, right?

09:11:40 11 **A** Yes.

09:11:40 12 **Q** You understand that that is where if a pharmacist is
09:11:45 13 going to do their due diligence, where they may input some
09:11:49 14 notes, correct?

09:11:50 15 **A** It's one of the areas, yes.

09:11:51 16 **Q** Right. So they may put in notes about called the
09:11:56 17 physician or something like that?

09:11:58 18 **A** No.

09:11:58 19 **Q** Those notes would not go in there?

09:12:01 20 **A** Not necessarily.

09:12:01 21 **Q** Not necessarily or no, they would not ever go in
09:12:04 22 there?

09:12:04 23 **A** It was up to the pharmacist, but the direction for
09:12:08 24 that particular comment field was intended for if a
09:12:12 25 prescription was refused, so that if that patient did go to

09:12:18 1 another Walgreens store with that prescription, if the first
09:12:22 2 Walgreens store felt it did not neat good faith, the
09:12:25 3 pharmacy down the street would see that information for that
09:12:29 4 specific prescription.

09:12:29 5 **Q** So your testimony is the only thing that should be in
09:12:34 6 that box is reasons to refuse a prescription?

09:12:36 7 **A** That is not what I said.

09:12:38 8 **Q** Okay.

09:12:38 9 **A** However, that --

09:12:39 10 **Q** Well, help me understand.

09:12:41 11 Will that box -- here, let's -- this is the good faith
09:12:48 12 dispensing comments box, right?

09:12:50 13 **A** No, it's not called that.

09:12:53 14 **Q** That's -- it's called here, "I wanted to reach out to
09:12:59 15 you about your thoughts on the good faith dispensing
09:13:01 16 comments, the comments section."

09:13:04 17 So can we call it the good faith dispensing comments
09:13:07 18 section?

09:13:08 19 **A** No, because that's not what she's referring to.

09:13:11 20 **Q** Okay. What is she referring to?

09:13:13 21 **A** There are multiple --

09:13:15 22 MS. SWIFT: Objection to the writing on the
09:13:17 23 demonstrative that didn't match the witness's testimony.

09:13:21 24 THE COURT: I don't have it anyway so --

09:13:23 25 You may answer.

09:13:24 1 **A** The comments that she's referring to are specific to
09:13:27 2 the GFD refusal prescriptions or other comments that a
09:13:32 3 pharmacist might use. But that is only one area in our
09:13:36 4 computer system where comments can be entered.

09:13:39 5 **Q** Okay. So your testimony on the comments section is
09:13:45 6 that she's talking about the refusal section?

09:13:48 7 **A** A section where we do give direction for refusal.

09:13:52 8 **Q** Section where give direction --

09:13:57 9 **A** To enter refusals.

09:14:01 10 **Q** For refusal.

09:14:03 11 Well, that's critical, isn't it?

09:14:06 12 **A** For that specific prescription.

09:14:08 13 **Q** Yeah. You understand some of these prescriptions have
09:14:13 14 renewals, so you can have a prescription that's a year old
09:14:18 15 and it will still be up for renewal, right?

09:14:20 16 **A** A lot of things will change in a year, and each
09:14:23 17 prescription needs to be taken on its own merit.

09:14:25 18 **Q** That wasn't my question, ma'am.

09:14:27 19 Can you answer my question?

09:14:28 20 **A** Say your question again, please.

09:14:30 21 **Q** Yes, ma'am.

09:14:31 22 I said this: Some of these prescriptions have
09:14:35 23 renewals, so you can have a prescription that's a year old
09:14:40 24 and it can still come up for renewal, right?

09:14:43 25 **A** I don't know what your definition of renewal is, but a

09:14:45 1 prescription for a controlled substance cannot be renewed.

09:14:49 2 Q Refilled.

09:14:49 3 A A new prescription has to be written physically by the
09:14:52 4 prescriber for a Schedule II. It cannot be refilled.

09:14:55 5 Q So you cannot have a refill back in 2014?

09:14:58 6 A Not on a Schedule II. It would have to be a paper

09:15:02 7 written prescription or an electronic prescription that is
09:15:06 8 sent by the physician.

09:15:07 9 Q So you've got a refusal section that's getting full,
09:15:15 10 and you give instructions to delete that information?

09:15:18 11 A The oldest information should be deleted, and the most
09:15:22 12 recent information should be added.

09:15:24 13 Q In other words, you'll have information about refusing
09:15:29 14 prescriptions, and you will instruct people delete that
09:15:33 15 information?

09:15:33 16 A That information is located in multiple places within
09:15:37 17 the store and in the computer. And, yes, the most recent
09:15:40 18 information needs to be entered into the comment field,
09:15:45 19 which means that, yes, older information that is not
09:15:49 20 relevant anymore to the prescription you're looking at will
09:15:52 21 be deleted in some cases.

09:15:54 22 Q Well, wait a minute, wait a minute.

09:15:57 23 Older information that's not relevant to the
09:16:02 24 prescription you're looking at will be purged, deleted?

09:16:06 25 A In some cases.

09:16:09 1 **Q** And you say it's not relevant because it's a different
09:16:13 2 prescription?

09:16:14 3 **A** That is correct.

09:16:15 4 **Q** So if someone brings in a hydro prescription and it's
09:16:24 5 refused because it looks fake, that's not going to be
09:16:27 6 relevant when the person brings in an oxy prescription?

09:16:30 7 **A** There's a difference.

09:16:30 8 **Q** Is that what you're saying?

09:16:32 9 **A** I'm saying that you have to enter the most recent
09:16:37 10 information.

09:16:38 11 **Q** Ma'am, can you answer my question, please?

09:16:42 12 **A** Can you ask your question again?

09:16:44 13 **Q** Yes, ma'am.

09:16:45 14 So if someone brings in a hydro prescription and the
09:16:50 15 pharmacist determines that it's fake and enters that into
09:16:54 16 your comments field but that comments field gets full and so
09:17:00 17 it's purged, then later when that same prescription brings
09:17:05 18 in an oxy prescription, the comments are gone, aren't they?

09:17:10 19 **A** For that situation in that field, yes. But recall
09:17:15 20 that I mentioned there are multiple places that they can
09:17:18 21 enter comment.

09:17:19 22 **Q** Ma'am, I'm sure they can enter comments in multiple
09:17:24 23 fields, but if that's the field they choose, and that's the
09:17:28 24 field where you direct them to put it, it's gone later by
09:17:33 25 your purging policy, correct?

09:17:35 1 **A** It's not a policy, but, yes, they have to purge it if
09:17:39 2 the field gets too full.

09:17:41 3 **Q** Well, your reply to this was "Thoughts on this?"

09:17:49 4 **A** Correct.

09:17:49 5 **Q** And then you get told the following: "I think that's
09:17:54 6 probably a good idea. Target drug good faith dispensing
09:17:59 7 comments are only supposed to be for one script each time,
09:18:04 8 so technically, other than ID info that may be in the
09:18:08 9 comments, other info could be purged."

09:18:12 10 Do you see that?

09:18:13 11 **A** I do.

09:18:13 12 **Q** So the comment field that you say was the section
09:18:23 13 where direction for refusal was supposed to be could be
09:18:27 14 purged of information, true?

09:18:28 15 **A** The older information, yes.

09:18:29 16 **Q** And that older information could be a reason for --
09:18:33 17 well, should be by you a reason for refusal, right?

09:18:37 18 **A** You're putting my words in my mouth.

09:18:39 19 **Q** No, ma'am.

09:18:40 20 **A** But for that specific prescription, the notes need to
09:18:43 21 be there.

09:18:44 22 **Q** Ma'am, I'm not trying to put any words in your mouth.
09:18:47 23 You specifically, and I can show you the testimony,
09:18:49 24 you specifically said, you used these words, that "this is a
09:18:55 25 field for reasons for refusal."

09:18:58 1 Are you changing on that now? Would you like to see
09:19:01 2 it?

09:19:01 3 **A** No, that is one of the areas for reasons for refusal,
09:19:04 4 yes.

09:19:06 5 **Q** Yeah, so I'm not putting words in your mouth. I'm
09:19:08 6 trying to understand your testimony under oath. Right?

09:19:13 7 Your testimony under oath is the comments section is
09:19:17 8 the section where direction for refusals are put, right?

09:19:21 9 **A** Refusals for the prescription that you have in front
09:19:24 10 of you.

09:19:25 11 **Q** And so you have recognized that your company's going
09:19:29 12 to have a policy or an approach that purges that
09:19:37 13 information, true?

09:19:37 14 **A** It does not purge it on its own, but, correct, the
09:19:41 15 oldest information, if the newest information doesn't fit,
09:19:44 16 they have no other option than to delete older information.

09:19:49 17 **Q** So you're saying now they have no other option, and
09:19:54 18 the reason they have no other option is because that's the
09:19:56 19 system y'all had in place at the time, right?

09:19:59 20 **A** That's correct.

09:19:59 21 **Q** And so you had a system in place that did not leave an
09:20:03 22 option for leaving the reasons for refusal. Instead, they
09:20:09 23 would be purged as the age continued, as the time continued,
09:20:14 24 right?

09:20:15 25 MS. SWIFT: Objection. Mischaracterizes the

09:20:17 1 testimony.

09:20:18 2 THE COURT: Overruled.

09:20:21 3 **A** So when a prescription is refused, the prescription is
09:20:26 4 refused for that specific prescription. Our policy is we
09:20:30 5 take each prescription on their own merit. What's happening
09:20:34 6 with the patient, what's happening with the prescriber who
09:20:36 7 wrote it, and what's happening at that time with the
09:20:40 8 pharmacist.

09:20:42 9 The reason why we do that is to ensure that if a
09:20:46 10 patient's prescription is refused at Walgreens, only that
09:20:50 11 prescription is refused. And it's refused at all Walgreens.

09:20:53 12 And so the pharmacist's instruction is to put a note
09:20:57 13 in the computer system in addition to keeping a hard copy in
09:21:02 14 the refusal folder that we discussed yesterday, to put it
09:21:05 15 into the system so that the next pharmacist down the road,
09:21:10 16 should the patient show up with that prescription, know that
09:21:13 17 the pharmacist at store A refused to fill the prescription
09:21:16 18 and that prescription was refused at all stores.

09:21:19 19 **Q** Right. That's critical information, isn't it?

09:21:22 20 **A** For that specific prescription, yes.

09:21:24 21 **Q** Well, ma'am, let's say you've got a person, and this
09:21:28 22 person is holding a fake --

09:21:32 23 **A** There's a difference between a --

09:21:34 24 **Q** Prescription?

09:21:35 25 **A** -- fake prescription.

09:21:37 1 **Q** Time out, ma'am. I've got to ask questions, and then
09:21:39 2 you give answers, okay?

09:21:41 3 **A** Okay.

09:21:41 4 **Q** I want you to suppose that person's holding a fake
09:21:44 5 prescription and takes it into a Walgreens store.

09:21:49 6 You with me so far?

09:21:50 7 **A** Yes.

09:21:50 8 **Q** And the Walgreens store says -- the pharmacist is on
09:22:00 9 top of their game, they say that prescription looks fake to
09:22:05 10 me. I'm not going to fill it.

09:22:07 11 You with me so far?

09:22:08 12 **A** Yes.

09:22:13 13 **Q** Then that Walgreens pharmacist puts a note in this
09:22:18 14 comments section where you direct them to put the note, and
09:22:22 15 the note says, "Note: Person X, Rx refused, fake
09:22:35 16 prescription."

09:22:36 17 Puts it in the notes field, right?

09:22:39 18 **A** There may be a note in the field, but it won't say
09:22:43 19 "fake."

09:22:43 20 **Q** All right. It will say something more polite, like
09:22:47 21 "suspicious"?

09:22:48 22 **A** No it will not. It will say it did not pass the
09:22:51 23 Walgreens good faith dispensing policy.

09:22:54 24 **Q** So y'all don't have them --

09:22:56 25 MS. SWIFT: Objection. She wasn't done with

09:22:58 1 her answer.

09:22:59 2 MR. LANIER: I'm sorry, Judge.

09:23:00 3 THE COURT: Yes, let her finish, please.

09:23:01 4 **A** There's a difference between a fake prescription and a
09:23:04 5 prescription that does not meet our good faith dispensing
09:23:07 6 policy. Two completely different situations.

09:23:11 7 **Q** Well, I'm asking you if it's a fake prescription, will
09:23:16 8 a note be put in there to that effect? Should a note be put
09:23:22 9 in there to that effect?

09:23:23 10 **A** It's possible, but there are multiple places where
09:23:25 11 they would enter that.

09:23:26 12 **Q** But we're talking specifically about the section where
09:23:28 13 y'all direct them to put their reasons for refusal,
09:23:32 14 remember? That was your testimony.

09:23:33 15 **A** Oh, I remember my testimony, but I also recall that
09:23:36 16 there's a difference between a good faith dispensing
09:23:41 17 rejection prescription because it does not meet good faith
09:23:45 18 and a fake prescription where the doctor didn't write it,
09:23:47 19 the patient forged it.

09:23:48 20 **Q** All right. Then instead we'll say it's refused for
09:23:53 21 doctor shopping. How's that?

09:23:57 22 **A** I would say refused on good faith dispensing, not
09:24:00 23 doctor shopping. That's different as well.

09:24:04 24 **Q** So the policy is, just say we refuse it, don't give
09:24:07 25 details why?

09:24:07 1 **A** We have all that information in the refusal folder at
09:24:10 2 the home store, which is noted in the comments.

09:24:13 3 **Q** But back then, it wasn't on a computer where any
09:24:17 4 pharmacist could see it. It's on a paper copy, right?

09:24:21 5 **A** Correct. However, the store -- the store at store B
09:24:25 6 knows what store refused it at store A and calls -- can call
09:24:31 7 that pharmacist and have a conversation because the notes
09:24:35 8 are retained in the refusal folder.

09:24:37 9 **Q** Okay. So, ma'am, these are the notes of refusal that,
09:24:44 10 first of all, your policy is that these notes don't need to
09:24:48 11 contain the reason for refusal beyond just didn't pass our
09:24:53 12 standards, right?

09:24:53 13 **A** That is correct, for that specific prescription.

09:24:56 14 **Q** Don't you think it would be more useful to put into a
09:25:04 15 comments section the specific reasons, like called the
09:25:06 16 doctor, doctor said it was not genuine, or called the
09:25:13 17 doctor, doctor said didn't know the patient was shopping, or
09:25:17 18 we saw evidence -- checked OARRS, saw doctor shopping, saw
09:25:23 19 pharmacy shopping. Don't you think putting substance like
09:25:26 20 that might be helpful?

09:25:27 21 **A** We have many places in our computer system to put that
09:25:30 22 information.

09:25:30 23 **Q** Is that a "yes," that you do think it would be helpful
09:25:33 24 to put into the comments section where you put the reasons
09:25:35 25 for refusal?

09:25:36 1 **A** Multiple places in IntercomPlus to put comments. It
09:25:41 2 does not always have to be in that spot.

09:25:43 3 **Q** Ma'am, can you answer my question?

09:25:47 4 **A** Our policy is to enter information into our computer
09:25:50 5 system. If a prescription fails good faith, it goes into
09:25:54 6 that comments section for that specific prescription. We
09:25:59 7 have patient comments, we have prescription comments, and we
09:26:02 8 have prescriber comments.

09:26:03 9 The pharmacists are able to use any of those fields.

09:26:07 10 **Q** That wasn't my question. My question was, don't you
09:26:10 11 think it would be a good policy in this section where they
09:26:15 12 give their -- they're directed to give their reasons for
09:26:20 13 refusal, don't you think it would be a good policy to have
09:26:23 14 them explain why in some measure of detail?

09:26:27 15 **A** It is explained why. It did not pass the
09:26:32 16 pharmacy's -- the pharmacist's good faith dispensing
09:26:36 17 procedures when they went through it.

09:26:37 18 **Q** Ma'am, that it does not pass good faith dispensing is
09:26:39 19 not in itself detail, is it?

09:26:41 20 **A** It is because our pharmacists are trained that there
09:26:45 21 are multiple reasons why a prescription is failed for good
09:26:48 22 faith. And they can always call that pharmacist who did not
09:26:52 23 pass that prescription and get more detail.

09:26:54 24 **Q** What if that pharmacist isn't working?

09:26:57 25 **A** The notes are in the refusal folder at the store for

09:27:00 1 the other pharmacists to pull.

09:27:01 2 **Q** Wait. The refusal folder, are you talking about the
09:27:04 3 hard copy notes that are back in the storage file cabinet
09:27:08 4 somewhere that get moved off site after a year to Iron
09:27:13 5 Mountain?

09:27:13 6 **A** No, the refusal folder does not get removed from the
09:27:17 7 store. It's the old prescription, like hard copy
09:27:21 8 prescriptions from two years or more.

09:27:24 9 **Q** So you're saying that the refusal folders are present
09:27:27 10 at the stores at all times?

09:27:29 11 **A** That's my understanding.

09:27:30 12 **Q** And this is back when they were paper refusal folders
09:27:34 13 because you couldn't put them on the computer, they wouldn't
09:27:36 14 let you?

09:27:38 15 **A** It's not that they wouldn't let me. The computer
09:27:40 16 system needed enhancements in order to do that. And, so,
09:27:45 17 yes, we did it on paper and put it in a folder.

09:27:48 18 **Q** Well, actually, ma'am, we'll get into the documents in
09:27:52 19 a little bit on that, but you begged for years to put them
09:27:54 20 on the computer and they wouldn't, would they?

09:27:57 21 **A** I have them on the computer now.

09:27:59 22 **Q** Yes, as of 2019, right?

09:28:03 23 MS. SWIFT: Objection.

09:28:03 24 THE COURT: Overruled.

09:28:04 25 **Q** As of 2019, right?

09:28:06 1 **A** We were able to put them in the computer for
09:28:08 2 electronic, yes.

09:28:08 3 **Q** Yeah, but you had been begging for years for that to
09:28:12 4 happen, hadn't you?

09:28:13 5 **A** It was an enhancement that I had on my list, yes.

09:28:15 6 **Q** In other words, you'd been saying for years we need
09:28:18 7 electronic access to this, and it finally happens in 2019,
09:28:22 8 right?

09:28:22 9 **A** Yes. We entered it in 2019.

09:28:25 10 **Q** So let's go back to 2014.

09:28:27 11 This is a time where y'all are purging information on
09:28:32 12 the box that gives direction for refusal, right?

09:28:36 13 **A** When you say "y'all," who is y'all?

09:28:41 14 **Q** Walgreens.

09:28:42 15 **A** No, it's not Walgreens.

09:28:43 16 **Q** Okay.

09:28:43 17 **A** It is the pharmacist at the location is removing the
09:28:47 18 information -- the old information, and the new information,
09:28:51 19 the relevant information for that specific prescription
09:28:55 20 would be documented into that box.

09:28:57 21 **Q** Well, are you answering this question as a pharmacist
09:29:00 22 or are you answering this question as Walgreens' senior
09:29:09 23 director of pharmaceutical integrity and third-party
09:29:13 24 operations?

09:29:14 25 **A** If you look at that e-mail, that is not me answering

09:29:16 1 that question.

09:29:18 2 **Q** Ma'am, the question is, someone wanted to reach out to
09:29:25 3 you, and your reply was simply, what are your thoughts on
09:29:29 4 this. Right?

09:29:30 5 **A** Correct.

09:29:31 6 **Q** So who are you -- who is Ed Bratton? Is he a local
09:29:35 7 pharmacist?

09:29:35 8 **A** Those are my team. That's my -- those folks are the
09:29:40 9 people on my team.

09:29:42 10 **Q** So who is Patricia Daugherty?

09:29:46 11 **A** She is a pharmacist on my team.

09:29:47 12 **Q** And your team is who? What's your team?

09:29:52 13 **A** The pharmaceutical integrity managers.

09:29:55 14 **Q** Uh-huh. Pharmaceutical integrity managers.

09:30:05 15 These are the people in charge of overseeing that
09:30:09 16 policy nationwide, right?

09:30:10 17 **A** Ensuring that it is executed upon, yes.

09:30:13 18 **Q** Well, in charge of developing, changing, and improving
09:30:18 19 the policies and procedures around controlled substance
09:30:23 20 dispensing. That's what y'all did, isn't it?

09:30:27 21 **A** Yes.

09:30:28 22 **Q** And so when you say, wait, it wasn't company saying to
09:30:31 23 do this, it was the pharmacists, ma'am, y'all are the
09:30:36 24 company, aren't you?

09:30:42 25 **A** I represent the company, yes.

09:30:43 1 **Q** And so does Patricia Daugherty who says, I think
09:30:48 2 that's a good idea, other info beyond the ID info, other
09:30:54 3 info could be purged.

09:30:55 4 Do you see that?

09:30:56 5 **A** Yes.

09:30:56 6 **Q** So to blame this on the pharmacists and say it's the
09:31:00 7 pharmacists that purge, this is your policy that you're in
09:31:05 8 charge of developing, changing, and improving around
09:31:10 9 controlled substances throughout all the Walgreens stores,
09:31:14 10 right?

09:31:15 11 MS. SWIFT: Objection. Mischaracterizes the
09:31:16 12 testimony.

09:31:17 13 MR. LANIER: Not at all.

09:31:18 14 THE COURT: Overruled.

09:31:20 15 **Q** Right?

09:31:20 16 **A** So I kind of got lost in your statement on what was
09:31:27 17 the question.

09:31:28 18 **Q** I'll reask it.

09:31:30 19 Ma'am, you said that this is the pharmacists' purging,
09:31:36 20 but the policy is not coming from the pharmacists. It's
09:31:41 21 coming from the group within the company that develops,
09:31:43 22 changes, and improves policies and procedures around
09:31:48 23 controlled substance dispensing, right?

09:31:50 24 **A** That's correct.

09:31:51 25 **Q** Thank you.

09:31:55 1 And it's your testimony to the jury today that that's
09:31:58 2 a good policy, it's a good thing to purge information about
09:32:01 3 why prescriptions were refused, right?

09:32:05 4 **A** It's my testimony today that that was what we had to
09:32:08 5 work with at the time. The directions to our stores have
09:32:14 6 always been you must enter information around your good
09:32:18 7 faith dispensing whether you're refusing it for that
09:32:22 8 specific prescription.

09:32:24 9 Each prescription is taken on its own merit, and what
09:32:27 10 might be refused today may -- or, excuse me, what may have
09:32:32 11 been refused let's say a year ago may not be refused today.

09:32:38 12 **Q** Ma'am, can you please now answer my question?

09:32:45 13 **A** You'll have to reask it. I'm --

09:32:47 14 **Q** Yes, ma'am.

09:32:47 15 I said: And it's your testimony to the -- here.

09:32:55 16 It's your testimony to the jury today --

09:33:04 17 **A** I can see it.

09:33:05 18 **Q** Your testimony to the jury today that it's a good
09:33:10 19 thing, good policy -- it's a good thing to purge information
09:33:12 20 about why prescriptions was refused.

09:33:16 21 You think that's a good policy, right?

09:33:19 22 **A** We've improved and changed our policies across the
09:33:24 23 years. Of course we would not want anything major to be
09:33:27 24 purged from the system. We have multiple places in our
09:33:30 25 computer system where information can be entered.

09:33:34 1 **Q** Right. And multiple places where it can be purged.

09:33:37 2 My question to you is simple: Is that a good policy
09:33:42 3 to have, to purge information on reasons you've refused
09:33:48 4 prescriptions? Is that a good policy or not?

09:33:51 5 **A** It was the best we could do with the computer system
09:33:55 6 section that we had at the time. And our policy is the most
09:33:59 7 recent information needs to be in there. I hear you, you
09:34:04 8 said good.

09:34:05 9 **Q** I'm not fussing that it's the best you could do at the
09:34:08 10 time because of your computer system. We can then argue
09:34:11 11 whether or not the computer system should have been changed.

09:34:15 12 My question first is, do you think it's a good policy
09:34:18 13 to purge this information?

09:34:20 14 **A** Depends on what the information is.

09:34:21 15 **Q** If the information were the reasons that prescriptions
09:34:26 16 for controlled substances were refused, do you think it's
09:34:31 17 good to purge that information?

09:34:32 18 **A** It would depend on how old that information is.

09:34:37 19 **Q** So it's good to purge it if it's how old?

09:34:40 20 **A** I can't give you that information. Each situation has
09:34:42 21 got to be taken on its own merit.

09:34:44 22 **Q** So it's good to have a policy that purges old
09:34:49 23 information as long as it's selectively purged, is that what
09:34:54 24 I'm hearing?

09:34:54 25 **A** It was never written in our policy.

09:35:01 1 **Q** Well, ma'am, did you send an e-mail out -- no, did you
09:35:08 2 make a budget request to enhance the computer system so that
09:35:15 3 those comments could be kept instead of purged?

09:35:18 4 **A** Yes.

09:35:19 5 **Q** And did it get shut down or was it enhanced in the
09:35:22 6 next coming weeks, months?

09:35:25 7 **A** The way our budget system works, it's very
09:35:29 8 complicated. It did not get approved right away.

09:35:33 9 **Q** When did it finally get approved in this change?

09:35:35 10 **A** I was able -- I was able to get the electronic good
09:35:41 11 faith dispensing information in our computer system in 2019.

09:35:43 12 **Q** Five years later?

09:35:45 13 **A** Yes.

09:35:48 14 **Q** Do you have any clue how many prescriptions for
09:35:52 15 controlled substances went out in Lake and Trumbull County
09:35:56 16 in those five years?

09:35:57 17 **A** I do not.

09:36:02 18 **Q** Meanwhile, if we continue in 2014, y'all are under an
09:36:10 19 agreement with the Government concerning how you will run
09:36:16 20 your business, true?

09:36:21 21 **A** If you're referring to the memorandum of agreement,
09:36:23 22 yes.

09:36:24 23 **Q** Yeah, you signed that memorandum of agreement, right?

09:36:27 24 **A** I did?

09:36:27 25 **Q** And --

09:36:29 1 **A** No, no, that was a question.

09:36:32 2 I didn't sign a memorandum of agreement.

09:36:35 3 **Q** Oh, I'm sorry. I thought you signed part of that. I

09:36:40 4 must be wrong. I'm crossing my wires.

09:36:42 5 There was a memorandum of agreement which you are

09:36:46 6 aware of because it's the one that in a sense established

09:36:50 7 your job, right?

09:36:51 8 **A** It was the -- it was what I was asked to make sure

09:36:56 9 that we executed on.

09:37:00 10 **Q** Now, part of what y'all had to do related to that is

09:37:10 11 monitor your stores and check on how things are going and

09:37:15 12 make sure that you're doing a better job nationwide, right?

09:37:18 13 **A** Yes.

09:37:18 14 **Q** I'm going to hand out Plaintiffs' -- I'm going to ask

09:37:23 15 to be handed out Plaintiffs' Exhibit 25492, please.

09:37:27 16 You did an internal audit in this regard, didn't you?

09:37:39 17 Or by "you," Walgreens did an internal audit, right?

09:37:42 18 **A** Yes.

09:37:42 19 **Q** And I've handed you Plaintiffs' Exhibit 25492. This

09:37:48 20 is an e-mail to you December 12, 2014, concerning such

09:37:53 21 internal audit. Correct?

09:37:55 22 **A** Yes.

09:37:56 23 **Q** And in this e-mail to you we see that it's the

09:38:08 24 controlled substance order monitoring process review.

09:38:12 25 Correct?

09:38:12 1 **A** Yes.

09:38:13 2 **Q** And it gives the background that on June 11, 2013,
09:38:19 3 Walgreens entered into a settlement agreement -- settlement
09:38:24 4 and memorandum of agreement with the DOJ and the DEA. True?

09:38:30 5 **A** Yes.

09:38:31 6 **Q** And then it says, "We recommend the following
09:38:37 7 enhancements be made."

09:38:39 8 Do you see that?

09:38:40 9 **A** I do.

09:38:40 10 **Q** So now you're a year and a half after the agreement.
09:38:49 11 There's a set of enhancements that are being sought, right?

09:38:57 12 **A** They're being recommended.

09:38:59 13 **Q** Yeah. These are because there are still problems even
09:39:06 14 rolling into -- throughout 2014, right?

09:39:10 15 **A** Well, that he found -- they found items that they
09:39:15 16 recommended enhancement. By that time, we were not
09:39:22 17 distributing -- or we were getting close to not distributing
09:39:26 18 controlled substances from our warehouses anymore. And so
09:39:29 19 the order monitoring system that I have -- I had then and I
09:39:33 20 still have today was for my information because we're not
09:39:42 21 legally required to have an order monitoring system when we
09:39:45 22 do not distribute controlled substances ourselves.

09:39:49 23 **Q** All right. And to make sure we're clear, distribute
09:39:51 24 is different than dispense?

09:39:53 25 **A** Yes.

09:39:53 1 **Q** Distribute's sending them to your stores; dispense is
09:39:58 2 sending them out of your stores. Right?
09:40:00 3 **A** Yeah, dispense to patients, correct.
09:40:03 4 **Q** So this was a time where you had revamped the
09:40:06 5 distribution, the suspicious order monitoring program,
09:40:11 6 right?
09:40:12 7 **A** Yes. There was a new system in place.
09:40:14 8 **Q** And yet your new system still needed more enhancing,
09:40:18 9 according to this, correct?
09:40:20 10 **A** Yeah, they had recommendations.
09:40:22 11 **Q** And instead of doing those, y'all just quit dispensing
09:40:28 12 the next year, didn't you?
09:40:29 13 **A** No, that was of the plan all along, was to stop
09:40:34 14 distributing -- did you say distributing or dispensing?
09:40:36 15 **Q** Distributing is what I meant to say.
09:40:38 16 **A** Yeah, that was the plan all along. When I accepted
09:40:42 17 the role in the pharmaceutical integrity team, the plan was
09:40:46 18 already in place to move all controlled substance
09:40:51 19 distribution to wholesalers versus our Walgreens
09:40:54 20 distribution centers.
09:41:00 21 **Q** Well, these are all enhancements that y'all never did
09:41:03 22 because you just quit distributing?
09:41:08 23 **A** No, I can't say that we didn't do all of them. I
09:41:10 24 would have to take it line by line to be honest with you.
09:41:13 25 But I cannot say that we did not do all of them. Some of

09:41:17 1 them of course were like, okay, yeah, that makes sense.

09:41:20 2 When you enter into a new system, you know, as you
09:41:23 3 learn things, you know, you get feedback from the field, you
09:41:26 4 learn things from team members that are working with the
09:41:30 5 system. There are things that come up that, you know, you
09:41:34 6 do want to make adjustments on.

09:41:36 7 We make adjustments to systems that we have all the
09:41:41 8 time.

09:41:42 9 **Q** So you're saying some may have been done, you don't
09:41:44 10 know unless you go line by line?

09:41:46 11 **A** Correct.

09:41:48 12 **Q** Now, beyond that, you were also doing an audit to
09:41:51 13 check on these dispensing, the drugs going out of the
09:41:53 14 stores, right?

09:41:53 15 **A** Yes.

09:41:54 16 **Q** And on page 2 you'll see this comment, "The purpose of
09:41:59 17 our review was to identify, evaluate, and test the policies,
09:42:06 18 procedures, and processes implemented as it pertains to
09:42:09 19 retail pharmacies as a result of the settlement agreement."

09:42:13 20 Do you see that?

09:42:27 21 **A** Yes.

09:42:28 22 **Q** And if we go then to page 12, if we're looking at the
09:42:31 23 audit report, it is page 15 of the document itself. It's
09:42:33 24 the one that starts out with "Target good faith dispensing
09:42:37 25 policy."

09:42:38 1 Can you find that page, please?

09:42:43 2 **A** Yes.

09:42:45 3 **Q** Now, here we read, "Walgreens has implemented a target
09:42:54 4 drug good faith dispensing policy for the pharmacists to
09:42:56 5 follow, and a targeting drug good faith dispensing checklist
09:43:04 6 for the pharmacists to complete when certain controlled
09:43:07 7 substance prescriptions are dispensed."

09:43:09 8 Do you see that?

09:43:10 9 **A** I do.

09:43:10 10 **Q** "The target drug good faith dispensing checklist was
09:43:16 11 created to aid pharmacists in determining whether a
09:43:20 12 prescription for certain drugs have been written for a
09:43:25 13 legitimate medical purpose."

09:43:27 14 Do you see that as well?

09:43:27 15 **A** Yes.

09:43:28 16 **Q** And then an issue is identified, isn't it?

09:43:32 17 **A** Yes.

09:43:33 18 **Q** "Based on discussions with store operations
09:43:39 19 management, district managers and pharmacy supervisors are
09:43:45 20 expected -- oh, no.

09:43:50 21 Based on discussions with store operations management,
09:43:54 22 district managers and pharmacy supervisors are expected to
09:43:57 23 perform store walks of each store in their district and
09:44:02 24 approximately every 30 to 45 days."

09:44:04 25 Do you see this?

09:44:05 1 **A** Yes.

09:44:05 2 **Q** Now, Mr. Weinberger questioned Mr. Joyce about his
09:44:11 3 store walks.

09:44:12 4 Do you know Mr. Joyce? I think we said you do.

09:44:15 5 **A** I know who he is, yes.

09:44:17 6 **Q** And Mr. Joyce commented that he would log them into
09:44:21 7 his personal computer every time he did them.

09:44:23 8 Is that standard policy?

09:44:26 9 **A** As far as I know, yes.

09:44:27 10 **Q** "While specific questions are asked during these store
09:44:32 11 walks pertaining the target drug good faith dispensing
09:44:36 12 policy, no corporate reporting is generated to summarize the
09:44:42 13 results from the visits as the walks were not established as
09:44:46 14 an audit reporting vehicle."

09:44:50 15 Do you see that?

09:44:50 16 **A** I do.

09:44:51 17 **Q** Do you believe that that was a good policy you had in
09:44:53 18 place? And by that I mean have the district manager or
09:44:59 19 pharmacy supervisor perform a store walk and not report back
09:45:04 20 to corporate on what happened.

09:45:08 21 **A** I do believe that it was a good -- it was an adequate,
09:45:13 22 and I'll tell you why.

09:45:14 23 Because they are our boots on the ground. They are
09:45:16 24 the ones that are eyes and ears of what's happening in the
09:45:20 25 store, what's happening in the community, and they would

09:45:24 1 escalate to my team or to, you know, one of the managers on
09:45:28 2 my team concerns that they may have. And I had other areas
09:45:36 3 of checks and balances that I would get reporting on.

09:45:39 4 **Q** Well, actually, it says something different here,
09:45:42 5 doesn't it?

09:45:43 6 It says, "Based on discussions held with the
09:45:48 7 compliance and pharmacy services department, there is no
09:45:51 8 monitoring performed outside of the store walk program to
09:45:54 9 determine whether the pharmacists across the chain are
09:45:57 10 adhering to the requirements set forth."

09:46:01 11 Do you see that?

09:46:02 12 **A** That is what it says.

09:46:03 13 **Q** And so when you say "that was adequate," your word,
09:46:10 14 "adequate," right?

09:46:11 15 **A** Yes.

09:46:11 16 **Q** You said that was adequate "because I had other areas
09:46:14 17 of checks and balances I would get reporting on."

09:46:18 18 **A** I did.

09:46:18 19 **Q** But yet this says "there is no monitoring performed
09:46:25 20 outside of the store walk program to determine whether
09:46:28 21 pharmacists are adhering to the requirements."

09:46:31 22 Do you see that?

09:46:32 23 **A** I do.

09:46:32 24 **Q** And so when I asked you if this was a good policy and
09:46:38 25 you said you believe it was adequate, isn't truth be told

09:46:43 1 you could have a much better policy to make sure that the
09:46:47 2 stores are doing what they should be doing?

09:46:51 3 **A** There are other ways from an electronic point of view
09:46:55 4 that you could have better or easier monitoring.

09:47:01 5 **Q** Well, there's even a recommendation made, actually a
09:47:04 6 number of them.

09:47:06 7 Do you see that below?

09:47:07 8 **A** I do.

09:47:09 9 **Q** "A monitoring program and related procedures should be
09:47:13 10 created to provide an adequate level of assurance that
09:47:18 11 pharmacists across the chain are adhering to the
09:47:23 12 requirements set forth in the policy."

09:47:25 13 Do you see that?

09:47:26 14 **A** I do.

09:47:26 15 **Q** And when you say, no, no, no, what we had was
09:47:30 16 adequate, did you disagree with the recommendation of
09:47:34 17 creating a policy to ensure that pharmacists were adhering
09:47:39 18 to the requirements?

09:47:40 19 **A** I felt that our policies were adequate, but we did
09:47:43 20 follow the recommendation from our audit department.

09:47:46 21 **Q** Well, ma'am, you ultimately got an audit that shows
09:47:51 22 your policies were not adequate, didn't you?

09:47:54 23 **A** Audits happen in place to make sure that compliance
09:47:57 24 measures and checks and balances are done. So, yes, our
09:48:00 25 audit department did monitor and go back and check to make

09:48:03 1 sure that our stores were doing what they were supposed to
09:48:07 2 be doing.

09:48:09 3 **Q** Ma'am, I'm not sure that you answered my question, so
09:48:11 4 I want to show it to you and see if you're answering it.

09:48:13 5 I said: Ma'am, you ultimately got an audit that shows
09:48:20 6 your policies were not adequate, didn't you?

09:48:23 7 **A** Oh, correct. They felt it was not adequate, correct.

09:48:27 8 **Q** But not just this audit. You all hired an outside
09:48:31 9 company to come do an audit, didn't you?

09:48:33 10 **A** You'll have to show me that one to refresh my memory.

09:48:36 11 **Q** Okay. So you had in place, as the person who was in
09:48:44 12 charge of developing, changing, and improving the policies,
09:48:54 13 you had in place a policy that you deemed adequate?

09:49:05 14 **A** At the time I deemed it adequate, you are correct.
09:49:08 15 This was in 2014, like, you know, within a year of when we
09:49:12 16 launched our good faith dispensing policy.

09:49:13 17 **Q** Right. But you've already said that this is something
09:49:22 18 that should have been done from the very beginning of time.

09:49:26 19 **A** Did I say that?

09:49:27 20 **Q** Well, all right, maybe you didn't.

09:49:29 21 Don't you think that your pharmacists and your stores
09:49:33 22 should have had policies in place to monitor the dispensing
09:49:38 23 of controlled substances whenever you're selling them?

09:49:42 24 **A** We had policies in place that our pharmacists needed
09:49:45 25 to follow. We had field supervision that reviewed policies

09:49:51 1 and procedures and made sure they were being adhered to when
09:49:54 2 they went into the stores.

09:49:54 3 **Q** But they were inadequate, weren't they?

09:49:57 4 **A** That's what the audit department found, that it could
09:50:00 5 be better.

09:50:01 6 **Q** Yes, that they were inadequate, even under the
09:50:06 7 settlement agreement that y'all had entered into with the
09:50:07 8 Government, right?

09:50:10 9 **A** You'll have to show me the settlement agreement and
09:50:13 10 this and, you know, the timing.

09:50:16 11 **Q** The settlement agreement was entered into over a year
09:50:19 12 earlier.

09:50:20 13 **A** I'm aware of when it was -- when it was agreed to.

09:50:23 14 **Q** And it had specific agreements. Do I need to show you
09:50:27 15 again what you all agreed to do?

09:50:33 16 You don't remember what you agreed to do with the
09:50:35 17 Government?

09:50:35 18 **A** I remember there were many pages. And we've improved
09:50:40 19 upon all of that since that was put in place.

09:50:42 20 **Q** Do you remember what you -- what Walgreens agreed to
09:50:48 21 do on maintaining a -- it was Plaintiffs' Exhibit 15, on
09:50:53 22 "maintaining a compliance program in an effort to detect and
09:50:58 23 prevent diversion of controlled substances, the program
09:51:01 24 including routine and periodic training of all Walgreens
09:51:05 25 pharmacy employees responsible for dispensing controlled

09:51:08 1 substances."

09:51:09 2 Do you remember that?

09:51:10 3 **A** I do.

09:51:11 4 **Q** I mean, that's what you were in charge of seeing to,
09:51:14 5 isn't it?

09:51:14 6 **A** Yes, but this is just one piece of all of that.

09:51:16 7 **Q** Yes, ma'am. And all I'm driving at is this is a piece
09:51:20 8 where your policies a year and a half later were still
09:51:25 9 inadequate, weren't they?

09:51:26 10 **A** We made improvements, yes.

09:51:28 11 **Q** They were still inadequate, weren't they?

09:51:31 12 **A** They were inadequate to our audit department. I felt
09:51:34 13 that the boots on the ground, the pharmacy supervisors and
09:51:39 14 the district managers who went into the stores to review to
09:51:42 15 make sure good faith dispensing was done in accordance to
09:51:45 16 our policy, I felt that they were adequate. The audit
09:51:52 17 department found them not adequate, and we improved and
09:51:55 18 enhanced and added additional things.

09:51:58 19 This was just one piece of the puzzle of the work that
09:52:02 20 my team was doing.

09:52:03 21 **Q** So your approach was, this is adequate because while
09:52:14 22 the audit department says it's not, you just trusted people
09:52:18 23 like Mr. Joyce to go through and do that?

09:52:20 24 **A** I did.

09:52:21 25 **Q** Would you be surprised to find out that we've asked

09:52:24 1 for the computer information from Mr. Joyce where he says he
09:52:29 2 documented this, and it's strangely barren?

09:52:33 3 MS. SWIFT: Objection, Your Honor. That's
09:52:37 4 incorrect.

09:52:45 5 (At side bar at 9:52 a.m.)

09:52:58 6 THE COURT: All right. What's the objection?

09:53:00 7 MS. SWIFT: I'll move to strike the question,
09:53:01 8 Your Honor. It's completely inaccurate. Walgreens has
09:53:06 9 produced numerous store walk documents from Mr. Joyce's
09:53:08 10 files, from other files, we went back and look at
09:53:11 11 plaintiffs' request if there was anything else to produce,
09:53:13 12 and we didn't identify anything except for I think three
09:53:15 13 documents that don't have anything to do with this.

09:53:17 14 THE COURT: Well, did Walgreens produce the --
09:53:24 15 did Walgreens produce the records that Mr. Joyce testified
09:53:27 16 that he maintained?

09:53:30 17 MR. WEINBERGER: Your Honor, last night --

09:53:32 18 MS. SWIFT: I can't hear what the judge is
09:53:34 19 asking with people talking over.

09:53:36 20 THE COURT: Mr. Joyce said that he maintained
09:53:37 21 on his personal computer the notes he made of his periodic
09:53:42 22 store walk-throughs. So my question is, has Walgreens
09:53:46 23 produced those --

09:53:48 24 MR. WEINBERGER: Your Honor, last night.

09:53:49 25 THE COURT: Hold it. I'm asking Ms. Sullivan.

09:53:49 1 MR. WEINBERGER: Oh, I'm sorry.

09:53:54 2 THE COURT: She made the objection.

09:53:55 3 MS. SWIFT: It's Ms. Swift, for Walgreens,

09:53:57 4 Your Honor.

09:53:57 5 THE COURT: Ms. Swift.

09:53:57 6 MS. SWIFT: Walgreens has produced all of the

09:53:58 7 store walk documents that are responsive in this litigation,

09:54:01 8 including documents from Mr. Joyce's file.

09:54:03 9 MR. WEINBERGER: So she didn't answer your

09:54:04 10 question, Your Honor. So let me clarify.

09:54:07 11 Last night we got three pages of documents from his

09:54:15 12 computer. All three pages are actually in substance the

09:54:22 13 same identical information. They're just different -- it's

09:54:29 14 a different font. And I can show you the documents.

09:54:35 15 MR. STOFFELMAYR: Judge, can I clarify this?

09:54:37 16 This is very misleading.

09:54:38 17 THE COURT: No, this is the question I'll

09:54:40 18 allow. You can show her those documents, you can show her

09:54:45 19 the documents that were produced and ask her, you know, is

09:54:50 20 it surprising to you that these are the only documents that

09:54:52 21 Walgreens has produced for Joyce's walk-throughs. Then you

09:54:58 22 can come back on redirect.

09:54:59 23 MR. STOFFELMAYR: Because he has to ask the

09:55:00 24 question about the documents that Walgreens actually

09:55:03 25 produced which are voluminous.

09:55:05 1 MR. WEINBERGER: Your Honor.

09:55:06 2 MR. STOFFELMAYR: No, let me finish, please.

09:55:07 3 There are voluminous store walk records kept centrally

09:55:10 4 and at the stores which we produced. What Mr. Joyce

09:55:13 5 testified about was that he took informal notes as well

09:55:16 6 which he would e-mail to store managers after a visit.

09:55:20 7 Those were collected and searched at the beginning of the

09:55:23 8 case. There is nothing relevant in there. They discuss

09:55:26 9 things like whether store employees were dressed

09:55:28 10 appropriately, whether the bathroom is clean.

09:55:30 11 THE COURT: As long as the question is asked,

09:55:34 12 show her the documents, the only documents that have been

09:55:36 13 produced that Joyce kept on his computer, all right, and as

09:55:42 14 long as you ask the question that way, are these -- would it

09:55:46 15 surprise you that these are the only documents that were

09:55:48 16 produced pertaining to what Mr. Joyce kept on his personal

09:55:52 17 computer for his walk-throughs, that's a fair question.

09:55:57 18 MR. STOFFELMAYR: But the question needs to be

09:55:58 19 asked in a way that's not misleading. To suggest to her

09:56:01 20 that these are somehow different --

09:56:02 21 THE COURT: Let's move on.

09:56:11 22 (In open court at 9:56 a.m.)

09:56:42 23 MR. LANIER: Your Honor, for purposes of the

09:56:44 24 record, I'm going to mark this as Plaintiffs' 3000. We may

09:56:48 25 need to adjust the number later. I just made that one up

09:56:52 1 because we think that it's an available one.

09:56:55 2 And these are three pages that were produced to us

09:56:58 3 that bear the Bates numbers E-04535266, E-04535260, and

09:57:20 4 E-04535259.

09:57:36 5 BY MR. LANIER:

09:57:36 6 Q Ma'am, after Mr. Joyce testified we requested under

09:57:42 7 court authority to get the notes from his computer, and I'll

09:57:45 8 show you what we've marked as Plaintiffs' Exhibit 3000.

09:57:51 9 And in all of the years he was there, these are the

09:57:55 10 notes that --

09:57:59 11 MS. SWIFT: Your Honor, can we wait until

09:58:01 12 she's been asked if she's seen this before showing it to the

09:58:03 13 jury?

09:58:04 14 THE COURT: Overruled.

09:58:05 15 Q You'll see that on this page there's a 1/18 note. It

09:58:16 16 says, district -- or DM.

09:58:17 17 THE COURT: 1/18/19.

09:58:20 18 MR. LANIER: I'm sorry, 1/18/19. Thank you,

09:58:23 19 Your Honor.

09:58:23 20 Q Monday, January 18, 2019, Monday.

09:58:26 21 "DM," do you know what that would stand for in

09:58:30 22 parlance for your company?

09:58:31 23 A I'm assuming district manager.

09:58:33 24 Q Okay. "District manager with stores lacking service,

09:58:38 25 to show me a coaching card win."

09:58:41 1 That's not really going to monitor -- no note they're
09:58:44 2 monitoring the dispensing of controlled substances, fair?

09:58:49 3 **A** Fair. But I don't know what the reason for the visit
09:58:52 4 was. The district managers have lots of responsibilities,
09:58:57 5 and that tells me that they were looking for that specific
09:59:00 6 topic, but that doesn't mean that good faith dispensing was
09:59:05 7 not occurring at the store.

09:59:07 8 **Q** Right. This is where -- this is in response to
09:59:10 9 questions we asked him about his store walk program. This
09:59:16 10 was the one where each of them every 30 to 45 days they're
09:59:22 11 supposed to be walking and doing specific questions asked
09:59:26 12 pertaining to the target drug good faith dispensing policy.

09:59:29 13 Remember?

09:59:30 14 **A** Yeah, that was the recommendation from audit.

09:59:32 15 **Q** Nothing here on target good faith dispensing based on
09:59:39 16 that one walk there, is there?

09:59:41 17 **A** Correct.

09:59:41 18 **Q** Look at the next one. 1/4/19 Friday. "Visits going
09:59:48 19 forward will be, review and discuss POTW and how store team
09:59:54 20 understands and executes it."

09:59:56 21 You got any clue what that is?

09:59:58 22 **A** I do. It's plan of the week.

09:59:59 23 **Q** It's what?

10:00:00 24 **A** It's called plan of the week.

10:00:02 25 **Q** Plan of the week.

10:00:04 1 That's certainly not targeted to how good faith
10:00:07 2 dispensing is being done, right?

10:00:09 3 **A** Actually, it could have been. We do send out plan of
10:00:13 4 the weeks on a regular basis that include good faith
10:00:18 5 dispensing or information about pharmacy that is -- that
10:00:23 6 happens.

10:00:24 7 I don't know that -- you know, I don't know if that
10:00:27 8 plan of the week had it, but I am telling you that there are
10:00:32 9 times throughout the year where we do send out plan of the
10:00:35 10 weeks that have that information in there for our stores.

10:00:38 11 **Q** All right. "Review and discuss pulse, looking for
10:00:56 12 wins and opportunities."

10:00:46 13 What's pulse?

10:00:47 14 **A** A pulse is a measure that they look at multiple things
10:00:54 15 in the store. There's many different items that go into a
10:01:00 16 store pulse.

10:01:03 17 **Q** Like what?

10:01:04 18 **A** Expired products, customer service. And it's not
10:01:10 19 just -- it's front of store and pharmacy.

10:01:15 20 **Q** "Review and discuss wins and opportunities with the
10:01:21 21 customer plan."

10:01:23 22 Not really an audit of targeting good faith dispensing
10:01:28 23 there, is it?

10:01:30 24 **A** No.

10:01:31 25 **Q** "Look at metrics." That includes waiting time, right?

10:01:36 1 **A** I don't know if the waiting time was included in 2019.

10:01:41 2 **Q** Well, it certainly was earlier, right?

10:01:44 3 **A** It was something that we've measured in the past, yes.

10:01:46 4 **Q** Look at metrics and have expectations on what you

10:01:51 5 struggled with so we can come up with a plan to help you."

10:01:54 6 Right?

10:01:55 7 **A** Yes.

10:01:55 8 **Q** And then we've got "HCS, 1/15 and 1/16," with a "Wrap

10:02:09 9 up 1/17."

10:02:10 10 Do you see that?

10:02:11 11 **A** I do.

10:02:11 12 **Q** It's got prescription quality?

10:02:15 13 **A** It does.

10:02:15 14 **Q** It's got prescription NPS. What's NPS?

10:02:19 15 **A** Net promoter score.

10:02:21 16 **Q** Net promoter score?

10:02:22 17 **A** Yes.

10:02:22 18 **Q** Well, you've got to figure that's not controlled

10:02:25 19 substances, right?

10:02:26 20 **A** Right.

10:02:28 21 **Q** Better not be, right?

10:02:30 22 **A** Correct.

10:02:30 23 **Q** "Make sure the plan of the week is 100 percent

10:02:38 24 including the front consumption table in FE."

10:02:45 25 You know what "FE" is, don't you?

10:02:48 1 **A** Front end.

10:02:48 2 **Q** Yeah, that's -- those are the tables up at the front

10:02:51 3 that get us to buy stuff when we're checking out because

10:02:54 4 it's right there, right?

10:02:55 5 **A** That's where we put merchandise at the front of the

10:02:59 6 store, yes.

10:03:00 7 **Q** Yeah. So that part of the plan of the week we at

10:03:02 8 least know what it is, don't we?

10:03:03 9 **A** For that week down there, yes.

10:03:06 10 **Q** And then the only other note out of his 20-plus years

10:03:12 11 that we've got on this page is "7/30 area call."

10:03:18 12 Do you see that?

10:03:18 13 **A** I do.

10:03:19 14 **Q** It says, "No longer able to auto fill for controlled

10:03:26 15 substances."

10:03:28 16 So at least they know that, right?

10:03:31 17 **A** Yes.

10:03:32 18 **Q** "Are there any insurance plans, that's not good faith

10:03:42 19 targeted questions, is it?

10:03:43 20 **A** No.

10:03:44 21 **Q** "How is the customer plan getting not only to RXM and

10:03:48 22 staff but all of the staff."

10:03:51 23 Customer plans, not target drug good faith dispensing,

10:03:54 24 is it?

10:03:55 25 **A** Correct.

10:03:56 1 **Q** "We need to turn up the heat on digital, front end
10:03:59 2 with in store orders and prescription texting."

10:04:03 3 Again, that's not checking to see how good good faith
10:04:07 4 target dispensing is going, is it?

10:04:09 5 **A** No.

10:04:09 6 **Q** Those same notes, the 7/30 area call, the 1/4/19
10:04:22 7 Friday, the wrap up, and the 1/18 are produced on another
10:04:28 8 page. But that's it for all of his stores for years of
10:04:32 9 walking.

10:04:34 10 Do you understand that?

10:04:37 11 MS. SWIFT: Objection. That's
10:04:38 12 mischaracterizing the evidence again.

10:04:39 13 THE COURT: Overruled.

10:04:40 14 **A** I understand that's what --

10:04:42 15 THE COURT: Hold it.

10:04:43 16 MR. LANIER: Let me clarify, Your Honor.

10:04:45 17 THE COURT: Rephrase -- I'll sustain the
10:04:46 18 objection the way it was asked.

10:04:48 19 MR. LANIER: I got it, and I caught it at the
10:04:49 20 same time.

10:04:50 21 BY MR. LANIER:

10:04:50 22 **Q** Ma'am, when Mr. Joyce testified that he kept these
10:04:54 23 notes on his computer of his in store walks that he was
10:04:59 24 doing to check these good faith dispensing issues every 30
10:05:03 25 to 45 days, in each of his stores, you understand from his

10:05:08 1 computer that's all we got?

10:05:10 2 **A** I understand that he didn't document it. That does
10:05:13 3 not mean he didn't do it.

10:05:15 4 **Q** Ma'am, you know of all people how important it is to
10:05:19 5 document, don't you?

10:05:20 6 **A** I do. However, Brian Joyce is a pharmacist, and a
10:05:24 7 pharmacist can see and recognize things that don't look
10:05:28 8 correct or don't look right in their stores. Brian Joyce
10:05:32 9 was a pharmacist. He practiced as a pharmacist. He
10:05:36 10 practiced as a pharmacy supervisor. That doesn't
10:05:38 11 necessarily mean that good faith dispensing practices and
10:05:41 12 following of the policy was not happening.

10:05:44 13 **Q** Well, ma'am, if it's not being documented, you have no
10:05:49 14 way of knowing quality control, do you?

10:05:52 15 **A** I have no way of knowing quality control coming up to
10:05:55 16 the support center, but I rely on him and people in his
10:06:00 17 position to escalate concerns to my team.

10:06:03 18 **Q** Like Mr. Yaeger did with the concerns he had?

10:06:06 19 **A** Of course. And he took those very seriously.

10:06:11 20 **Q** But yet, you told --

10:06:11 21 THE COURT: Hold it. Hold it. Let her finish
10:06:12 22 her answer.

10:06:14 23 **A** He took those very seriously. We have never told our
10:06:17 24 store leaders or our, you know, district or field leaders to
10:06:22 25 tell a pharmacist to fill a prescription.

10:06:24 1 **Q** But wait a minute, ma'am. You told us yesterday
10:06:30 2 afternoon that you put a program into place of
10:06:34 3 businesspeople following up with the pharmacists because you
10:06:39 4 did have a problem with pharmacists that you did not trust
10:06:42 5 to fill all the prescriptions they needed to fill.

10:06:45 6 **A** No, not all the prescriptions they needed to fill. I
10:06:49 7 had a concern that we had pharmacists that were sloughing
10:06:52 8 off their responsibility and not filling controlled
10:06:58 9 substances.

10:06:58 10 They have to -- we're not telling them that they have
10:07:00 11 to fill a controlled substance, but we are telling them that
10:07:03 12 they have to go through their due diligence, they can't just
10:07:06 13 see a prescription and say, you know what, I'm not going to
10:07:09 14 fill this. They have to go through their due diligence.

10:07:12 15 The point of that report was to ensure that those
10:07:16 16 pharmacists had the appropriate documentation in the refusal
10:07:20 17 folder that showed that they did their due diligence before
10:07:23 18 they refused the prescription.

10:07:25 19 **Q** So you think it's adequate to have a program in place
10:07:31 20 that says, "specific questions are to be asked pertaining to
10:07:38 21 target good faith dispensing on these store walks every 30
10:07:42 22 to 45 days, but it doesn't need to be documented and nothing
10:07:46 23 needs to be reported back, and there doesn't need to be any
10:07:50 24 accountability, and the documentation that people think
10:07:52 25 they're doing can be what we've just seen from Mr. Joyce.

10:07:56 1 And you are fine with that as the vice president over
10:07:59 2 this whole area, right?

10:08:01 3 **A** Now that I'm the vice president and I have learned
10:08:04 4 many things over the years, we have changed our policies,
10:08:07 5 we've improved things. So at the time, I felt it was
10:08:11 6 adequate. After the audit, we made changes. We made
10:08:16 7 changes based on recommendations.

10:08:19 8 **Q** So my question is, looking back will you agree now
10:08:22 9 that it was inadequate?

10:08:24 10 **A** I would say it could be better. I wouldn't say it was
10:08:26 11 inadequate because we have eyes and ears at the field level
10:08:32 12 following up, and they are trained to escalate concerns up
10:08:35 13 to my team and up to the support center.

10:08:37 14 **Q** And yet, there was an external audit done a year
10:08:43 15 later, wasn't there?

10:08:44 16 **A** Yes. Or so you tell me anyway.

10:08:49 17 **Q** Well, let's see if I --

10:08:51 18 **A** You have to remind me.

10:08:52 19 **Q** All right. Let's see if I can remind you.

10:08:54 20 Plaintiffs' Exhibit 15085, please.

10:09:12 21 Do you have that document in front of you?

10:09:14 22 **A** I do.

10:09:14 23 **Q** You will see on the e-mail on the second page that you
10:09:20 24 started a chain here, Natasha Polster to Ed Bratton and the
10:09:27 25 others on your team.

10:09:28 1 Do you see that?

10:09:28 2 **A** I do.

10:09:30 3 **Q** And you said, "Please see below. We have been given
10:09:36 4 time on the monthly district manager webinars. I want an
10:09:41 5 outline that breaks out the findings of the BCI."

10:09:46 6 Does that ring a bell with you?

10:09:47 7 **A** I do. That stands for a basic control initiative. It
10:09:51 8 is an internal process that our asset protection team does
10:09:55 9 where they will follow up on various programs that we have
10:09:59 10 across our store, including in the pharmacy. And they will
10:10:03 11 go into stores to check that things that we need to look at
10:10:08 12 are being followed.

10:10:10 13 **Q** Okay. This is not the T-A-T-A, TATA external analysis
10:10:18 14 I was going to ask you about. This is one that's internal,
10:10:21 15 right?

10:10:21 16 **A** Correct.

10:10:21 17 **Q** So we are timewise over a year after those
10:10:27 18 recommendations had been made; is that right?

10:10:33 19 **A** Yeah, this audit -- or not an audit, it was a basic
10:10:37 20 control initiative was done six months or however long after
10:10:40 21 that other one.

10:10:41 22 **Q** Yeah, I think six months is closer to it. The other
10:10:43 23 was 2014, but it was toward the end of 2014. Right?

10:10:47 24 **A** Okay.

10:10:47 25 **Q** So within the realm of this you'll see a slide deck

10:10:52 1 attached. Good faith dispensing district manager webinar, a
10:11:00 2 presentation on this one that's got Eric Stahmann, one of
10:11:03 3 your team on it.

10:11:04 4 Do you see that?

10:11:05 5 **A** Yes.

10:11:09 6 **Q** And if we look at that, you will see that it sets out
10:11:12 7 the memorandum of agreement, what I read to you before,
10:11:16 8 right?

10:11:16 9 **A** Yes.

10:11:18 10 **Q** And it even calls it the Administrative Memorandum of
10:11:22 11 Agreement.

10:11:23 12 And then the next slide says, "In order to check" --
10:11:29 13 I'll slide this down -- in order to check if stores are
10:11:32 14 compliant with the policies put in place per the MOA" -- and
10:11:41 15 again, that's 2013 MOA, right?

10:11:44 16 **A** Yes.

10:11:44 17 **Q** Over two years before.

10:11:51 18 -- "a random sample size audit was conducted in June."

10:11:57 19 Do you see that?

10:11:58 20 **A** I do.

10:11:59 21 **Q** "Roughly 2400 stores" -- that's what, one out of every
10:12:07 22 four?

10:12:08 23 **A** Approximately.

10:12:09 24 **Q** -- "were audited for compliance on various good faith
10:12:15 25 dispensing and target good faith dispensing policies and

10:12:20 1 procedures."

10:12:21 2 Do you see that?

10:12:22 3 **A** I do.

10:12:22 4 **Q** Now, these are the very procedures that we were
10:12:24 5 talking about in the previous year, correct?

10:12:29 6 **A** Yes.

10:12:29 7 **Q** These are the ones where you said the program that we
10:12:33 8 had was adequate to make sure that this was working, right?

10:12:37 9 **A** At the time, that is exactly what I felt.

10:12:40 10 **Q** And so you had let those policies be in place for
10:12:45 11 years because you thought it adequate, but when the basic
10:12:51 12 control initiative was done, the results were unfavorable,
10:12:57 13 weren't they?

10:12:57 14 **A** That's what it says, yes.

10:12:58 15 **Q** Not only were the results unfavorable, but when target
10:13:09 16 drug prescriptions, and those are all -- all three of those
10:13:12 17 are opiates, right?

10:13:13 18 **A** Yes.

10:13:13 19 **Q** When those three opioids are dispensed, pharmacy team
10:13:21 20 members are responsible for completing the target drug good
10:13:28 21 faith dispensing checklist.

10:13:28 22 Do you see that?

10:13:29 23 **A** Yes.

10:13:29 24 **Q** "Number of stores that correctly had completed a
10:13:36 25 target drug good faith checklist attached to the filled

10:13:42 1 target drug prescription hard copies, 59.5 percent
10:13:47 2 compliance rate"?

10:13:49 3 **A** Of a hundred percent compliance, that is correct.

10:13:54 4 **Q** Yeah, in other words, out of 2407 stores that were
10:14:02 5 audited, a little over half, almost 60 percent, were
10:14:07 6 actually doing their job right?

10:14:09 7 **A** On every target drug that the person went in to check
10:14:15 8 on every one of the prescriptions that they pulled there was
10:14:19 9 a checklist attached to in over 1400 stores.

10:14:25 10 **Q** Is that yes, they were doing their job in almost 60
10:14:30 11 percent?

10:14:30 12 **A** Yes.

10:14:31 13 **Q** So that means over 40 percent weren't doing their job?

10:14:37 14 **A** Over 40 percent did not have a hundred percent
10:14:40 15 compliance. But remember, this is a hundred percent
10:14:42 16 compliance to the policy. The target drug good faith
10:14:47 17 dispensing checklist is not a requirement by law. It was a
10:14:49 18 policy that I put in place. And of course I would love and
10:14:53 19 wanted to see a hundred percent compliance, and that is why
10:14:57 20 I wanted to have that webinar, I wanted to ensure the field
10:15:02 21 leaders knew what to look for when they went into the
10:15:04 22 stores.

10:15:06 23 **Q** Ma'am, you didn't answer my question.

10:15:08 24 **A** I did answer the question.

10:15:09 25 **Q** No, ma'am. My question was, over 40 percent weren't

10:15:12 1 doing their job. Is that true or false?

10:15:14 2 **A** That is false. Over 40 percent were not 100 percent
10:15:19 3 compliant.

10:15:20 4 Go to the next page.

10:15:21 5 **Q** I will. Hold on one second.

10:15:24 6 Are you saying -- let's do this one first and we'll go
10:15:30 7 to the next one.

10:15:32 8 Should stores correctly complete the checklist and
10:15:38 9 attach it to the filled prescription? Should they? Is that
10:15:43 10 part of their job?

10:15:44 11 **A** Per policy, yes.

10:15:46 12 **Q** Right, that's my question.

10:15:48 13 **A** Yes. It's a policy, not a regulation.

10:15:52 14 THE COURT: Hold it, Ms. Polster. It would
10:15:55 15 work a lot better if you let Mr. Lanier complete his
10:15:57 16 question, and then I'll make sure that he lets you complete
10:15:59 17 his answer.

10:16:00 18 THE WITNESS: Thank you.

10:16:01 19 THE COURT: Otherwise, it's not going to work.

10:16:04 20 **Q** This whole thing is put together as what Walgreens
10:16:08 21 agreed to do in the memorandum of agreement with the
10:16:12 22 Government. And this was to make sure to check if stores
10:16:16 23 are compliant with the policies and procedures put in place
10:16:24 24 per the agreement with the Government.

10:16:25 25 Do you remember that?

10:16:27 1 **A** I do.

10:16:28 2 **Q** So should stores be compliant? Is that part of their
10:16:31 3 job?

10:16:31 4 **A** Yes.

10:16:32 5 **Q** Okay. So part of job is to be compliant, right?

10:16:38 6 **A** Yes.

10:16:39 7 **Q** And is it true that over 40 percent were not
10:16:42 8 compliant?

10:16:43 9 **A** Over 40 percent were not compliant a hundred percent
10:16:47 10 of the time.

10:16:47 11 **Q** Well, I understand that, ma'am.

10:16:51 12 So a hundred -- I mean over 40 percent were not
10:16:54 13 compliant, and that compliance was part of their job;
10:17:00 14 therefore, over 40 percent weren't doing their job, right?

10:17:04 15 **A** I don't agree with the way that is characterized. And
10:17:08 16 you will get to that on the next page. They were not --
10:17:11 17 there was not a target drug good faith dispensing checklist
10:17:14 18 attached to every prescription that they were pulled in 40
10:17:19 19 percent of the stores. Of course, I would want a hundred
10:17:22 20 percent, but that does not mean that good faith dispensing
10:17:24 21 was not happening at that location.

10:17:26 22 **Q** All right. Their job is to comply. Over 40 percent
10:17:34 23 did not comply.

10:17:36 24 You'll at least agree with that, all right? Is that
10:17:40 25 fair?

10:17:41 1 MS. SWIFT: Objection. It mischaracterizes
10:17:42 2 her testimony.

10:17:43 3 THE COURT: Hold it. There's a question.

10:17:45 4 We'll let the witness answer.

10:17:46 5 **A** I don't agree with the way you're asking the question.
10:17:49 6 Over 40 percent did not get a hundred percent compliance
10:17:52 7 where a checklist was put on every hard copy that was asked
10:17:57 8 for by policy, but that does not mean that good faith
10:18:01 9 dispensing was not happening.

10:18:04 10 **Q** Well, but no, the compliance that I'm asking about is
10:18:08 11 not whether or not the prescription should have gone out.
10:18:12 12 We've got no way of knowing that.

10:18:13 13 **A** Correct.

10:18:14 14 **Q** The compliance I'm asking about is with the policies
10:18:18 15 and procedures put in place, and that policy and procedure
10:18:21 16 says you complete this checklist and attach it to the
10:18:25 17 prescription, right?

10:18:26 18 **A** Walgreens' policy for good faith dispensing for the
10:18:30 19 checklist, yes. But that policy was not a requirement of
10:18:35 20 the MOA.

10:18:39 21 **Q** The requirement of the MOA was put a plan in place to
10:18:42 22 do it?

10:18:43 23 **A** To have --

10:18:44 24 **Q** That's the plan and policy you put in place to do it,
10:18:47 25 right?

10:18:47 1 **A** It was done --

10:18:48 2 MS. SWIFT: Objection.

10:18:48 3 **A** -- before the MOA was signed.

10:18:50 4 **Q** You knew what was coming down the pike. We've seen

10:18:53 5 that from the e-mails where you were commenting on it.

10:18:57 6 Remember? Do I need to --

10:19:00 7 **A** No, you don't need to show me again.

10:19:03 8 **Q** Okay. So the stores, part of their job was to be

10:19:08 9 compliant with the policies and procedures, and one of those

10:19:14 10 policies and procedures was to complete this checklist and

10:19:16 11 attach it to prescriptions, true?

10:19:18 12 **A** One of those policies, yes.

10:19:19 13 **Q** And if their job was to comply with that, you know

10:19:22 14 over 40 percent did not comply?

10:19:24 15 MS. SWIFT: Objection. Asked and answered

10:19:25 16 several times.

10:19:26 17 **A** They were not 100 percent compliant, yes.

10:19:32 18 **Q** Thank you. Now we can go to the next sheet. This is

10:19:35 19 the one you wanted me to turn to, right?

10:19:37 20 **A** No, it was the next one after.

10:19:39 21 **Q** Let's do this one anyway.

10:19:40 22 "If the pharmacist determines that a target drug

10:19:46 23 prescription does not meet good faith dispensing

10:19:47 24 requirements, a copy of the refused prescription and

10:19:53 25 completed target drug good faith dispensing checklist must

10:19:56 1 be in the designated refusal file folder."

10:20:02 2 Do you see that?

10:20:03 3 **A** Yes.

10:20:03 4 **Q** This is one of those places you said before it doesn't
10:20:09 5 matter if we delete the comments because you can go back and
10:20:12 6 look in the folders, right?

10:20:14 7 **A** Yes.

10:20:14 8 **Q** So these folders that you can go back and look at
10:20:18 9 where it doesn't matter if the comments are deleted has a
10:20:22 10 statistic, don't they?

10:20:27 11 "Number of stores that correctly had completed that
10:20:32 12 checklist attached to a refused prescription."

10:20:36 13 Do you see that?

10:20:36 14 **A** Yes.

10:20:36 15 **Q** 75.7 percent compliance rate, right?

10:20:42 16 **A** A 75.7 percent compliance rate that the target drug
10:20:50 17 good faith dispensing checklist that they used was attached
10:20:53 18 to the refused prescription. That does not mean that there
10:20:57 19 weren't refused prescriptions in that file. They just did
10:21:00 20 not have the checklist attached to it.

10:21:03 21 **Q** Didn't follow the policy?

10:21:05 22 **A** Not exactly, they did not follow the policy.

10:21:07 23 **Q** Not -- no, don't say not exactly.

10:21:10 24 They didn't follow the policy, did they?

10:21:12 25 **A** Their checklist was not attached. However, if the

10:21:15 1 hard copy had notes on it, it was okay for them to do it
10:21:21 2 that way as long as there was a refused prescription in
10:21:23 3 there.

10:21:23 4 **Q** Okay. So your position and the policy for your
10:21:28 5 company coming from your job was it doesn't really matter if
10:21:33 6 you do that or not as long as you've got a note on the
10:21:37 7 prescription. Is that what you're saying?

10:21:39 8 **A** I'm saying that there are times where the good faith
10:21:42 9 dispensing checklist wasn't attached; however, there may
10:21:45 10 have been notes on the hard copy that was written in there
10:21:47 11 that gave the leadership or whoever was looking information
10:21:53 12 to show that the pharmacist did their due diligence and
10:21:57 13 their good faith, correct.

10:21:58 14 **Q** So your policy that you're saying under oath right now
10:22:02 15 for all the Walgreens people around the United States is you
10:22:06 16 don't really need to do this as long as you make a note on
10:22:08 17 the prescription. Is that what you're saying?

10:22:10 18 MS. SWIFT: Objection. Mischaracterizes.

10:22:11 19 THE COURT: Overruled.

10:22:13 20 **A** What I'm saying is is that a checklist is in the
10:22:17 21 policy, yes. We want checklists done on each time.

10:22:20 22 What I know to be true is based on this and feedback
10:22:24 23 that we had from the stores was that a checklist was not
10:22:27 24 always used, but notes were put on the hard copy and put
10:22:31 25 into the refusal file.

10:22:33 1 **Q** Okay. With due respect, ma'am, did you read the next
10:22:36 2 page of this?

10:22:36 3 **A** I did.

10:22:38 4 **Q** The next page doesn't say what you said. It says the
10:22:42 5 exact opposite, doesn't it?

10:22:45 6 Look, read with me. "If the pharmacist determines

10:22:49 7 that a target drug prescription does not meet GFD
10:22:53 8 requirements, a copy of the refused prescription," what's
10:22:59 9 the next word?

10:23:00 10 **A** "And completed checklist."

10:23:03 11 **Q** "And completed checklist."

10:23:06 12 What's the next word?

10:23:07 13 **A** "Must be designated in the refusal file folder."

10:23:10 14 **Q** "Must be in the designated refusal file folder."

10:23:14 15 Do you see that?

10:23:14 16 **A** I do.

10:23:14 17 **Q** Doesn't say it's optional, does it?

10:23:16 18 **A** It doesn't.

10:23:17 19 **Q** Doesn't say just put the note on the prescription,
10:23:20 20 does it?

10:23:20 21 **A** It doesn't.

10:23:20 22 **Q** Doesn't say we're not too worried about it because we
10:23:24 23 trust our pharmacist, does it?

10:23:26 24 **A** It doesn't say that.

10:23:28 25 **Q** Doesn't say this is a policy that we don't really care

10:23:31 1 about, does it?

10:23:32 2 **A** I never once said that we didn't care about that
10:23:34 3 policy.

10:23:35 4 **Q** It says it must be done, doesn't it?

10:23:38 5 **A** Yes, it does.

10:23:39 6 **Q** And then it says, "After reviewing the refusal file
10:23:45 7 folder for calendar year 2015, how many refused
10:23:48 8 prescriptions were identified?"

10:23:49 9 Do you see that?

10:23:50 10 **A** I do.

10:23:50 11 **Q** You had over a thousand stores that never refused a
10:23:53 12 prescription. Do you see that?

10:23:55 13 **A** And they didn't need to refuse a prescription. You
10:23:58 14 have to understand the entire situation, the community, the
10:24:01 15 store, the prescriptions that they see. They may have not
10:24:05 16 had a reason to fill that the prescription that they were
10:24:08 17 looking at and ready to dispense did not meet good faith
10:24:11 18 dispensing.

10:24:11 19 **Q** Well, when you have only a 75 percent compliance rate
10:24:18 20 and 25 percent aren't complying, you can't really tell when
10:24:21 21 you go back and look at these that maybe refused two to
10:24:25 22 five, maybe did six to ten, true?

10:24:29 23 **A** It's not my job to ensure whether or not the
10:24:33 24 pharmacists are doing their due diligence. We have to trust
10:24:35 25 our pharmacists to make decisions based on the prescription

10:24:39 1 that they fill.

10:24:41 2 And what I'm saying is, you're right, I don't know
10:24:44 3 because I'm not there. That is why we have field
10:24:47 4 leadership, and that is why we have oversight of our stores.

10:24:50 5 **Q** The guys that are walking through every 30 to 45 days
10:24:53 6 making entries in their computers, like Mr. Joyce?

10:24:56 7 **A** That's one level of leadership.

10:24:59 8 **Q** Because you don't have any greater accountability back
10:25:03 9 in that time zone on those store visits, do you?

10:25:06 10 **A** We have the district managers, we have the store
10:25:15 11 managers are there, we have healthcare supervisors. We have
10:25:18 12 multiple levels of leadership that are in our stores every
10:25:20 13 day.

10:25:20 14 **Q** And when you say that these 1,106 [sic] stores that
10:25:27 15 had zero refused prescriptions, when you say, well, that's
10:25:29 16 probably okay because they were probably all legitimate.
10:25:32 17 Remember? That's what you said?

10:25:33 18 **A** That's what I said.

10:25:34 19 **Q** But we won't know that either because that's where the
10:25:39 20 over 40 percent aren't filling out the checklist comes in.
10:25:43 21 You can't look at the checklist over 40 percent of the time
10:25:46 22 to see that, because they didn't do it, right?

10:25:49 23 **A** Right.

10:25:50 24 **Q** "Leadership should be checking for compliance on a
10:26:04 25 regular basis."

10:26:06 1 That's a leadership issue, isn't it?

10:26:09 2 **A** We are asking our leadership when they go into the

10:26:12 3 stores that they are checking for the compliance with

10:26:17 4 policy, yes.

10:26:18 5 **Q** But, ma'am, leadership goes beyond the store level,

10:26:21 6 doesn't it?

10:26:21 7 **A** Oh, yes, yeah. That's the district --

10:26:27 8 **Q** Leadership -- my fault.

10:26:27 9 Leadership on this goes to you, right?

10:26:31 10 **A** That is not -- so my team was giving the direction,

10:26:38 11 and the leadership was being referred to as the field

10:26:42 12 leadership in the field.

10:26:44 13 **Q** Ma'am, we're in 2015 at this point, right?

10:26:46 14 **A** Yes.

10:26:47 15 **Q** You have become -- or you're shortly becoming senior

10:26:53 16 executive vice president in charge of pharmaceutical

10:26:56 17 compliance, execution of compliance-related tasks and the

10:27:02 18 overall strategy, correct?

10:27:03 19 **A** Correct.

10:27:04 20 **Q** And before that, you were developing, changing, and

10:27:10 21 improving the policies and procedures around this controlled

10:27:13 22 substance dispensing, right?

10:27:14 23 **A** Yes.

10:27:14 24 **Q** So within the framework of that job, leadership on

10:27:19 25 compliance goes back to you, doesn't it? The buck stops in

10:27:27 1 your seat, right?

10:27:28 2 **A** Yes, but that is not what this PowerPoint deck -- this
10:27:31 3 PowerPoint deck was intended for the audience in the field.

10:27:36 4 **Q** But this PowerPoint deck says "Results were
10:27:42 5 unfavorable," doesn't it?

10:27:43 6 **A** It does.

10:27:44 7 **Q** This is a sign that the system you've got in place is
10:27:49 8 not working, right?

10:27:51 9 **A** It is a sign that we need to make improvements, and we
10:27:56 10 have made improvements.

10:27:57 11 **Q** Well, this is 2015. You're two years after the
10:28:03 12 agreement, right?

10:28:04 13 **A** Correct. Again, one example of improvements that
10:28:11 14 we've made, but this is not the only thing that we looked at
10:28:15 15 around controlled substance dispensing.

10:28:30 16 **Q** Now, at this same time y'all are looking at the
10:28:40 17 economic consequences of your good faith dispensing, aren't
10:28:44 18 you?

10:28:46 19 **A** I'll have you refresh my memory.

10:28:49 20 **Q** Plaintiffs' Exhibit 19574, please.

10:29:14 21 MR. LANIER: Oh, Your Honor, it is 10:30.

10:29:17 22 Before I do this --

10:29:18 23 THE COURT: I was going to inquire.

10:29:20 24 Okay. Ladies and gentlemen, we'll take our mid
10:29:22 25 morning break. The usual admonitions. And then we'll pick

10:29:26 1 up in 15 minutes with Ms. Polster's testimony.

10:30:02 2 (Recess taken at 10:30 a.m.)

10:49:10 3 (Jury present in open court at 10:49 a.m.)

10:49:14 4 THE COURT: Please be seated.

10:49:15 5 Mr. Lanier, you may resume.

10:49:17 6 MR. LANIER: Thank you.

10:49:17 7 THE COURT: And Ms. Polster, you're still
10:49:18 8 under oath from yesterday. Thank you.

10:49:20 9 MR. LANIER: Thank you, Judge.

10:49:22 10 BY MR. LANIER:

10:49:23 11 Q Ms. Polster, right before the break you said, in
10:49:28 12 answer to one of my questions: "It's not my job to ensure
10:49:35 13 whether or not the pharmacists are doing their due
10:49:38 14 diligence. We have to trust our pharmacists to make
10:49:40 15 decisions based on the prescription that they fill."

10:49:45 16 Did you mean to say that?

10:49:50 17 A We do, we trust our pharmacists to fill their
10:49:52 18 prescriptions based on -- and ensuring their good faith
10:49:58 19 dispensing practices and their corresponding responsibility.

10:49:59 20 Q Well, I'll talk about that in a moment. The first
10:50:03 21 part, though, is what I was asking about.

10:50:05 22 "It's not my job to ensure whether or not the
10:50:09 23 pharmacists are doing their due diligence?

10:50:12 24 A You're right, that is incorrect.

10:50:14 25 Q That is your job, isn't it?

10:50:17 1 **A** Yes, it is part of my job, yes.

10:50:19 2 **Q** And when you say "we have to trust our pharmacists to
10:50:21 3 make decisions based on the prescriptions they fill," that
10:50:26 4 is unless they're underfilling prescriptions, right?

10:50:30 5 **A** No, that is not at all what that report means.

10:50:33 6 **Q** No, no, no, that -- I'm not referencing that report.

10:50:36 7 I'm referencing the one we talked about yesterday where you
10:50:40 8 said here are pharmacists that aren't filling enough C-II
10:50:46 9 prescriptions, so we need to have businesspeople review
10:50:50 10 them, look at the prescriptions, get them to take our
10:50:54 11 education, and try to get their -- those are not ones you're
10:51:03 12 trusting, are you?

10:51:04 13 **A** As part of any program that we implement, we try to
10:51:09 14 ensure that we have follow up to ensure that things are
10:51:11 15 being done correctly.

10:51:13 16 **Q** But --

10:51:13 17 **A** Part of that was -- and part of my responsibility was
10:51:17 18 I was getting complaints that were coming up from pharmacy
10:51:22 19 personnel and leadership saying, this guy I'm working with
10:51:26 20 won't fill any of the hard prescriptions, they just flat
10:51:32 21 out, straight up refuse prescriptions without even looking
10:51:35 22 at them.

10:51:37 23 We did run reports and we -- I don't even know if we
10:51:43 24 use them today, but we did run those reports to ensure that
10:51:46 25 we didn't have pharmacists sloughing their responsibility

10:51:50 1 and not filling prescriptions that were difficult just
10:51:52 2 because they had to take extra steps that were required.

10:51:55 3 **Q** With due respect, I don't want to rehash what we did
10:51:59 4 yesterday. But these are the same ones that didn't say in
10:52:03 5 your e-mail or in your writing they're not filling any.
10:52:07 6 These are the ones that weren't filling enough. Remember?

10:52:11 7 **A** It didn't say enough, did it?

10:52:13 8 **Q** Well --

10:52:14 9 **A** It said, all controlled substances or something like
10:52:20 10 that. And what was intended in that is that you can't just
10:52:23 11 fill your, you know, phenobarb prescription, which is a
10:52:28 12 controlled substance, and not fill any pain medication that
10:52:30 13 comes in.

10:52:33 14 **Q** The specific document, Plaintiffs' 19601, said
10:52:38 15 "they're not dispensing a lot."

10:52:39 16 **A** A lot of controlled substances.

10:52:41 17 **Q** Doesn't say they're not dispensing any?

10:52:45 18 **A** Correct.

10:52:45 19 **Q** So that we're clear on that.

10:52:47 20 But my point is --

10:52:48 21 MS. SWIFT: Objection. Did she finish her
10:52:51 22 answer?

10:52:51 23 THE COURT: Did you finish your answer, ma'am?

10:52:58 24 THE WITNESS: (Indicating).

10:52:58 25 MS. SWIFT: Sorry. I thought he had cut her

10:52:59 1 off.

10:53:00 2 THE COURT: Ask another question.

10:53:04 3 Q Thank you.

10:53:05 4 So that we're clear on that, you trust the pharmacists
10:53:12 5 to never refuse a prescription. But the pharmacists who
10:53:19 6 refuse a lot of prescriptions you don't trust?

10:53:22 7 A That is not at all what that is. They are to -- we
10:53:27 8 are to make sure that those pharmacists have the
10:53:30 9 documentation for those refusals. They can't just say,
10:53:34 10 sorry, I'm not filling this prescription and leave it for
10:53:37 11 the next guy.

10:53:38 12 Q Well, you ought to also make sure that they're
10:53:42 13 trained, right?

10:53:44 14 A Training is part of it.

10:53:47 15 Q Because if we go back to Plaintiffs' Exhibit Number
10:53:51 16 25492, which was that internal audit report that you and I
10:53:55 17 went through. Remember that?

10:53:57 18 A Yes.

10:53:58 19 Q If you'll look on page 17 in regards to this, it talks
10:54:08 20 about "a detailed review of the training data calendar year
10:54:13 21 2013 and 2014."

10:54:14 22 Do you see that?

10:54:15 23 A Yes.

10:54:15 24 Q "2013, IA" -- and that's an internal audit?

10:54:28 25 A Yes.

10:54:28 1 **Q** -- "noted that approximately 180 active employees at
10:54:32 2 the time of our testing (September 2014) had not completed
10:54:37 3 the good faith dispensing training, and that several
10:54:40 4 thousand active employees had not completed the good faith
10:54:46 5 dispensing policy."

10:54:48 6 Do you see that?

10:54:49 7 **A** Policy acknowledgement.

10:54:53 8 **Q** "At the time of our testing, over 35,000 employees had
10:54:59 9 not completed the good faith dispensing training that was
10:55:02 10 assigned in early October and required to be completed by
10:55:06 11 November 7."

10:55:08 12 Do you see that?

10:55:09 13 **A** I do.

10:55:09 14 **Q** And yet, 12 days later, 35,000 hadn't done it, right?

10:55:15 15 **A** Correct.

10:55:16 16 **Q** So these people that you're trusting are people that
10:55:22 17 you're not training the way your policies say you should,
10:55:25 18 right?

10:55:26 19 **A** No, I disagree with what you're saying.

10:55:29 20 The good faith dispensing training went to all store
10:55:33 21 and pharmacy -- or store leadership, field leadership, and
10:55:37 22 pharmacy technicians and pharmacists.

10:55:42 23 The pharmacists are required by their good faith
10:55:45 24 dispensing obligations under the CSA to ensure that they are
10:55:49 25 filling prescriptions for legitimate medical purpose. The

10:55:54 1 training was not completed by every single one of our
10:55:57 2 employees on time, yes, I agree with that.

10:55:59 3 Q Okay. This is the whole issue of monitoring good
10:56:04 4 faith dispensing training completion, right?

10:56:06 5 A Right.

10:56:07 6 Q And again, this internal audit says not getting it
10:56:11 7 done, right?

10:56:14 8 A Two weeks after the due date, correct, we were not a
10:56:19 9 hundred percent complete.

10:56:20 10 Q Well, not just not a hundred percent. Over 35,000
10:56:25 11 employees?

10:56:26 12 A Yeah, out of I can't remember how many because it was
10:56:28 13 way more than pharmacists, technicians, store personnel,
10:56:32 14 field personnel.

10:56:39 15 Q Okay. Now, within the framework, then, of this, let's
10:56:42 16 talk about some things that were being completed and where
10:56:44 17 y'all were paying attention to detail, okay?

10:56:52 18 A Okay.

10:56:53 19 Q And in that regard, right before the break I had you
10:56:58 20 handed Plaintiffs' Exhibit 19574. I would hope during the
10:57:02 21 break you've had a chance to look at it.

10:57:04 22 A I did.

10:57:05 23 Q This is a document that has got you as a recipient,
10:57:11 24 according to the first page. Correct?

10:57:13 25 A Yes.

10:57:13 1 **Q** And the subject on this is "Targeted drugs for good
10:57:22 2 faith dispensing," right?

10:57:22 3 **A** Yes.

10:57:22 4 **Q** And what y'all were finding out is the new program
10:57:30 5 you'd put in place, whether it was thorough or not is not
10:57:36 6 addressed, but that new program was affecting the budget,
10:57:42 7 wasn't it?

10:57:44 8 **A** I don't agree with what you were saying there in terms
10:57:47 9 of affecting the budget. I think --

10:57:49 10 **Q** Well, let -- I'm sorry.

10:57:51 11 Let me show you, see if that would help.

10:57:54 12 **A** Sure.

10:57:55 13 **Q** If you look on page 2, there's an e-mail on page 2
10:57:59 14 from Daniel Doyle.

10:58:01 15 You know him, right?

10:58:02 16 **A** Yes.

10:58:02 17 **Q** It's to Kermit Crawford, with a copy to Rex Swords,
10:58:10 18 right?

10:58:10 19 **A** Right.

10:58:10 20 **Q** And this is before the e-mail comes to you, right?

10:58:13 21 **A** Yes.

10:58:14 22 **Q** "Kermit, we budgeted a negative \$24 million impact
10:58:22 23 from controlled substance Schedule II drugs in fiscal year
10:58:30 24 2014."

10:58:30 25 Do you see that?

10:58:31 1 **A** I do.

10:58:34 2 **Q** Those are drugs that include the opiates that we're
10:58:36 3 talking about, right?

10:58:37 4 **A** Yes.

10:58:37 5 **Q** "We're actually seeing closer to a negative \$44
10:58:45 6 million of impact."

10:58:49 7 Do you see that as well?

10:58:49 8 **A** I do.

10:58:50 9 **Q** "The impact for the full year of the C-IIIs that are
10:58:55 10 not impacted by GFD is about 7 to 9 million."

10:59:01 11 Do you see that as well?

10:59:03 12 **A** I do.

10:59:03 13 **Q** Now, that tells you that -- a number of things,
10:59:10 14 doesn't it?

10:59:10 15 **A** It tells me that finance did not budget correctly.

10:59:18 16 When a corporation as large as Walgreens goes through the
10:59:22 17 budget process, they budget sales from front of store, from
10:59:27 18 pharmacy, and they have to plan very far in advance. And
10:59:32 19 they did not budget correctly.

10:59:36 20 And this e-mail to the who was then our president is
10:59:39 21 saying, we're seeing a bigger impact on controlled
10:59:44 22 substances, and that is exactly what I would expect to have
10:59:48 23 happened during that time.

10:59:49 24 **Q** Yeah, that's my point though.

10:59:51 25 Doesn't that tell you that the system y'all had in

10:59:54 1 place until 2014 was overdispensing drugs?

11:00:01 2 **A** No.

11:00:01 3 **Q** Because when you put targeted good faith dispensing,
11:00:04 4 even with inadequate training, when you put it in place, all
11:00:08 5 of a sudden the number of scripts you all fill declines,
11:00:13 6 right?

11:00:13 7 **A** There are multiple reasons why the number of
11:00:15 8 prescriptions declined. I think, yes, our policy may have
11:00:18 9 had something to do with it, but we were seeing very, very
11:00:21 10 big decreases across the entire industry, not just
11:00:24 11 Walgreens, across our entire industry.

11:00:26 12 The doctors started getting on board, the DEA was
11:00:28 13 taking action against prescribers. It was all over the
11:00:33 14 news. We had hospital systems putting their own policies in
11:00:36 15 place on how many controlled substances doctors could
11:00:39 16 dispense. The entire industry was decreasing.

11:00:43 17 **Q** But you all put out a new program you piloted in Las
11:00:48 18 Vegas and Orlando, didn't you?

11:00:50 19 **A** I don't know what this is. This is not one of my -- I
11:00:53 20 see it, but I don't know enough to be able to speak to it.

11:01:01 21 **Q** Well, I mean, you got this, right?

11:01:03 22 **A** I did get it.

11:01:04 23 **Q** And you do know enough to say that y'all did a pilot
11:01:07 24 program. We discussed it yesterday. In Las Vegas and
11:01:12 25 Orlando, right?

11:01:15 1 **A** Okay. So yes.

11:01:17 2 **Q** And so that pilot program where you did it in
11:01:21 3 Las Vegas and Orlando have seen a decrease in over 30
11:01:26 4 percent of prescriptions in the last 18 months.

11:01:29 5 **A** Do you see that?

11:01:29 6 **A** I do.

11:01:32 7 **Q** So don't you believe that your program, however
11:01:37 8 adequate or inadequate it may have been, was at least in
11:01:40 9 some measure reducing the number of scripts that are being
11:01:44 10 filled?

11:01:44 11 **A** Oh, yes.

11:01:46 12 **Q** Which tells you that if the program had been in place
11:01:51 13 10 years earlier, you could have reduced the number of
11:01:55 14 scripts 10 years sooner, true?

11:01:56 15 **A** There was a lot changing in the industry from 10 years
11:02:00 16 ago. Hindsight is always 20/20.

11:02:03 17 **Q** That wasn't my question, ma'am. Can you answer my
11:02:05 18 question?

11:02:05 19 **A** It is possible, but it is not -- I can't definitively
11:02:11 20 say.

11:02:12 21 I think the prescribing practices in 2006 versus what
11:02:14 22 happened in 2012, 2013 from prescribers changed dramatically
11:02:20 23 on the number of prescriptions that were coming in to retail
11:02:23 24 pharmacies.

11:02:23 25 **Q** So you're saying that maybe it's not your program that

11:02:26 1 was working, it's that the doctors were writing less?

11:02:28 2 **A** No, I think my program absolutely had something to do
11:02:32 3 with it, but I also think the prescribers were starting to
11:02:36 4 decrease the amount of prescriptions they were writing.

11:02:38 5 **Q** But if your program had something to do with it, then
11:02:41 6 that leaves me with my question.

11:02:44 7 Isn't it true that if you'd put such a program in
11:02:47 8 place earlier, you would have reduced the scripts earlier?

11:02:53 9 **A** I don't know that to be true because we were not
11:02:56 10 seeing chronic pain patients coming in to Walgreens. We
11:03:01 11 were seeing acute, we were seeing end of life. But the
11:03:05 12 chronic pain patients that we were starting to see an
11:03:08 13 increase between 2010 and 20 whenever was just starting.
11:03:14 14 And that was when I put that policy in place and we started
11:03:18 15 to see a decrease.

11:03:19 16 But we were seeing it in the industry, not just
11:03:21 17 Walgreens.

11:03:22 18 **Q** Well, you understand the industry was being put on
11:03:28 19 notice by the DEA just as much as you were, right?

11:03:30 20 **A** Absolutely. It was the entire industry.

11:03:34 21 **Q** The industry was at Joe Ran's [sic] presentation that
11:03:38 22 we saw yesterday where the people in your company that took
11:03:41 23 notes of it, said if the pharmacists would do their job, we
11:03:45 24 wouldn't have this problem, right?

11:03:46 25 **A** That was his words.

11:03:47 1 **Q** And the industry's present there, right?

11:03:50 2 **A** The pharmacy portion. I don't know about the

11:03:53 3 prescribers being in those.

11:03:56 4 **Q** This is the pharmacy portion, that's what I'm talking

11:03:59 5 about.

11:04:00 6 **A** Okay.

11:04:00 7 **Q** So finally, 2014, 2015, '16, y'all are putting

11:04:07 8 programs in place. But if you'd put them in place earlier,

11:04:11 9 we wouldn't have had these problems in 2008, '9, '10, '11,

11:04:20 10 '12 that we had, true?

11:04:21 11 **A** I don't know that to be true because the prescription

11:04:24 12 prescribing had changed dramatically. I don't know if my

11:04:26 13 policy that I put in place in 2013 would have made a

11:04:31 14 difference because we weren't seeing those chronic pain

11:04:35 15 patients come in to Walgreens as much as we were in the

11:04:41 16 2012, '10, '12, 11, whenever those time frames were.

11:04:48 17 **Q** But even still, if we continue on in this timeline, in

11:04:52 18 2015 y'all are still dispensing the trinity, aren't you?

11:04:55 19 **A** In some cases the trinity is appropriate. And, yes,

11:04:58 20 it is being dispensed.

11:05:00 21 **Q** So when others have testified that the trinity should

11:05:02 22 not be dispensed under any reason at all, you disagree with

11:05:09 23 that, and the policy at Walgreens is it's an okay thing to

11:05:13 24 do?

11:05:13 25 **A** It is -- I didn't say that it was an okay thing to do.

11:05:17 1 I said it was -- in our policies, they must be doing their
11:05:21 2 due diligence around dispensing a trinity prescription.
11:05:24 3 They have to understand what is happening with that
11:05:27 4 particular patient as to why the prescriber would be
11:05:31 5 prescribing it.

11:05:32 6 **Q** And the trinity is an opioid, a benzodiazapine, and a
11:05:38 7 muscle relaxer, right?

11:05:39 8 **A** Yes.

11:05:40 9 **Q** And you understand that's a bold print major red flag,
11:05:50 10 right?

11:05:51 11 **A** Yeah, you want to be careful if you're going to use
11:05:53 12 something like that to ensure that you are dispensing safely
11:05:57 13 for the patients.

11:05:58 14 **Q** And so the policy for Walgreens has been it's okay to
11:06:01 15 do that, there are times where it's the right thing to do?

11:06:05 16 **A** I don't know if I ever put that exactly in those
11:06:08 17 words, but we do know that there are times when a
11:06:13 18 prescription for a trinity will be dispensed.

11:06:25 19 **Q** The latest good faith dispensing checklist that I've
11:06:28 20 been able to find has already been introduced as Plaintiffs'
11:06:35 21 15068, I believe. I'll show you one of the pages and ask
11:06:42 22 you, does this look like the latest targeted drug good faith
11:06:46 23 dispensing checklist to you?

11:06:47 24 **A** I believe so.

11:06:47 25 **Q** The most prescribed controlled substance level II drug

11:07:02 1 in America, in fact the most prescribed drug in America for
11:07:05 2 years, y'all still don't have it on your target drug good
11:07:11 3 faith dispensing checklist, do you?

11:07:11 4 **A** No, but you see where we have other (optional-district
11:07:16 5 specific) or it could be pharmacist specific?

11:07:19 6 **Q** Yeah.

11:07:19 7 **A** That could be used at any time.

11:07:20 8 **Q** Right. You still don't have it listed, the most
11:07:27 9 overprescribed opiate out there, do you?

11:07:30 10 **A** I don't have it on the list, no.

11:07:32 11 **Q** Any reason you couldn't put it on your list?

11:07:37 12 **A** I haven't updated that list. I was focusing on the
11:07:40 13 drugs that the DEA was focused on when I put that policy in
11:07:42 14 place.

11:07:45 15 **Q** That wasn't my question, ma'am.

11:07:47 16 I said any reason you couldn't put it on your list?

11:07:50 17 **A** No, I could put it on the list if I wanted to put it
11:07:53 18 on the list.

11:07:53 19 **Q** And if you put it on the list and stores actually
11:07:55 20 followed the policies, they have to go through and answer
11:07:59 21 all of those questions before they dispensed it, wouldn't
11:08:02 22 they?

11:08:02 23 **A** They'd still have to go through and answer all of
11:08:06 24 those questions when they're filling any controlled
11:08:08 25 substance prescription, not just a target drug.

11:08:10 1 The target drug checklist is a tool that our
11:08:13 2 pharmacists were able to -- well, it was a requirement for
11:08:18 3 those three drugs, but it can be used with any prescription.

11:08:21 4 Q Oh, it -- ma'am, you just said "it was a requirement
11:08:24 5 for those three drugs, but it can be used with any
11:08:27 6 prescription." Right?

11:08:28 7 A Yes.

11:08:28 8 Q My question to you is, you could add it as a
11:08:32 9 requirement to hydrocodone, couldn't you?

11:08:37 10 A I could add it.

11:08:38 11 Q And then it would be a target drug checklist as a tool
11:08:45 12 that must be filled out with the most overprescribed opiate
11:08:48 13 out there and attached either to the prescription or is the
11:08:52 14 refusal to fill, right?

11:08:53 15 A Yes.

11:08:53 16 Q And there's no reason you haven't done that in almost
11:09:00 17 10 years you've been in your jobs over this, has it?

11:09:03 18 A I have not done it.

11:09:05 19 Q That would be a good thing to do, wouldn't it?

11:09:07 20 A Something I could consider.

11:09:09 21 Q Then the last thing I've got for you, and we'll be
11:09:16 22 finished with this part, is the checklist that we just
11:09:25 23 looked at. I want to make sure the jury understands where
11:09:30 24 those were.

11:09:33 25 When someone fills out that checklist, and we call

11:09:41 1 that the target drug good faith dispensing checklist, right?

11:09:49 2 **A** Yes.

11:09:50 3 **Q** It's got the little boxes. It asks questions like

11:10:04 4 does the person have a valid Government Photo ID copied and

11:10:07 5 attached to the prescription, right?

11:10:10 6 **A** Yes.

11:10:11 7 **Q** Was there a prior good faith dispensing refusal for

11:10:16 8 this exact prescription in the patient comments, right?

11:10:19 9 **A** Yes.

11:10:20 10 **Q** That's assuming it hadn't been deleted, right? Right?

11:10:26 11 **A** Yes.

11:10:28 12 **Q** "Patient's received this prescription from Walgreens

11:10:33 13 before." Correct?

11:10:34 14 **A** Yes.

11:10:35 15 **Q** "This prescription is from the same prescriber for the

11:10:38 16 same medication as the previous fill," right?

11:10:41 17 **A** Yes.

11:10:41 18 **Q** "Third-party insurance is billed (if cash or a cash

11:10:48 19 discount card, use caution)." Right?

11:10:53 20 **A** Yes.

11:10:53 21 **Q** "Patient does not appear intoxicated or under the

11:10:56 22 influence of illicit drugs."

11:10:58 23 Do you see that?

11:10:58 24 **A** Yes.

11:10:58 25 **Q** "If available in your state, PDMP has been reviewed."

11:11:09 1 Right?

11:11:09 2 **A** Yes.

11:11:09 3 **Q** And by the way, do you know that PDMP, in Ohio the
11:11:15 4 OARRS, could have been checked by your pharmacists had they
11:11:18 5 chosen to back as early as 2009?

11:11:20 6 **A** Yes, you told me that yesterday.

11:11:21 7 **Q** Okay. "Prescription is being filled on time.

11:11:30 8 "You've got geographic proximity."

11:11:33 9 You see that?

11:11:34 10 **A** Yes.

11:11:34 11 **Q** If it's a chronic prescription, one that's over 90
11:11:38 12 days, the use can be explained and is supported by
11:11:41 13 documentation, right?

11:11:41 14 **A** Yes.

11:11:41 15 **Q** "Per CDC recommendation, you offer Narcan. If the
11:11:49 16 prescription's more than 50 milligrams equivalent in
11:11:52 17 morphine, right?

11:11:54 18 **A** Yes.

11:11:54 19 **Q** Then you've got room for notes?

11:11:57 20 **A** Yes.

11:12:02 21 **Q** Now, that form is one that is very useful to have
11:12:06 22 available, right?

11:12:07 23 **A** It's helpful for the pharmacist, yes.

11:12:09 24 **Q** Well, so let's say I'm in Walgreens Store Number 1,
11:12:23 25 okay?

11:12:23 1 **A** Okay.

11:12:23 2 **Q** And I -- and let's go back to 2012. Oh, no, this
11:12:31 3 program wasn't in place in 2012, was it?

11:12:34 4 **A** Right, I didn't come into the position until December,
11:12:38 5 and so nationwide it went in 2013.

11:12:41 6 **Q** In 2000 when?

11:12:43 7 **A** 2013.

11:12:45 8 **Q** So in 2013, you've got your program in place. We're
11:12:50 9 going to assume that people are actually filling out the
11:12:52 10 forms, okay?

11:12:53 11 **A** Okay.

11:12:53 12 **Q** Best case scenario, everybody's doing their job
11:12:58 13 filling out the forms, all right?

11:13:00 14 **A** Okay.

11:13:00 15 **Q** So you've got this good faith checklist. You staple
11:13:06 16 it to the prescription. Right?

11:13:11 17 **A** Okay.

11:13:11 18 **Q** And those two together aren't scanned into a computer,
11:13:17 19 are they?

11:13:18 20 **A** The hard copy prescription is, yes.

11:13:21 21 **Q** But the good faith dispensing checklist, those two
11:13:25 22 together, are not scanned into the computer?

11:13:27 23 **A** Correct.

11:13:27 24 **Q** So instead what you've got is one of them old file
11:13:34 25 cabinets back in the storage room, and they just get filed

11:13:39 1 in Store Number 1 back in the old file cabinet, right?

11:13:43 2 **A** Yes.

11:13:44 3 **Q** Now, that person goes into Walgreens Store Number 2.

11:13:54 4 There's no way for the pharmacist to know about the
11:14:02 5 checklist that's been filled out and filed in Store Number
11:14:07 6 1, is there?

11:14:07 7 **A** Oh, they can. They can call that store, and that
11:14:11 8 store can pull the hard copy of a prescription that's
11:14:13 9 already been filled.

11:14:14 10 **Q** So the pharmacist that's supposed to do these
11:14:20 11 prescriptions -- that's an old-time phone, sort of.

11:14:28 12 The pharmacist can call the pharmacist?

11:14:31 13 **A** Yes.

11:14:31 14 **Q** And say, hey, time out, would you go back and look in
11:14:34 15 your file cabinet and see if you can find this target good
11:14:40 16 faith dispensing checklist on this patient?

11:14:42 17 **A** They could if they needed to do that to do their due
11:14:46 18 diligence, yes.

11:14:46 19 **Q** And as a practical matter, do you know if these are
11:14:49 20 filed by patient name or prescription number?

11:14:55 21 **A** Prescription number.

11:14:56 22 **Q** So they can't even look up the patient name. They've
11:14:58 23 got to know the prescription number?

11:15:00 24 **A** No, they can look up the patient name. They've got it
11:15:02 25 right in front of them.

11:15:03 1 **Q** And then they get the prescription number off of that?

11:15:05 2 **A** They can and they can also see notes and annotations
11:15:08 3 and other things about that patient.

11:15:09 4 **Q** That haven't been purged.

11:15:11 5 And then they can say, would you go find this and pull
11:15:15 6 it and come back and talk to me, right?

11:15:19 7 **A** If they need it for -- but, you know, each
11:15:22 8 prescription that they fill is taken on their own merit per
11:15:28 9 our policy. So the prescription that they're filling today,
11:15:30 10 they may not need previous information when they're making
11:15:35 11 their -- when they're, you know, going through their due
11:15:39 12 diligence to fill.

11:15:39 13 **Q** But they've got to check for doctor shopping, don't
11:15:41 14 they?

11:15:41 15 **A** They do. That's on the PDMP.

11:15:45 16 **Q** And they've got to check for pharmacy shopping, don't
11:15:49 17 they?

11:15:49 18 **A** And that is also tonight PDMP.

11:15:51 19 **Q** And that's assuming that they do the PDMP in 2013,
11:15:59 20 which is optional in Ohio until 2011 and then only required
11:16:06 21 with certain prescriptions, right?

11:16:10 22 **A** Our overarching good faith dispensing policy has
11:16:13 23 checking the PDMP in there if the pharmacist needs to refer
11:16:17 24 to it, they had access to it, they could go see it.

11:16:20 25 **Q** But again --

11:16:21 1 **A** Our target drug policy did ask them to document that
11:16:27 2 they indeed did it.

11:16:28 3 **Q** And this is assuming, again, that this is one of the
11:16:33 4 60 percent where the form was filled out and kept, right?

11:16:37 5 MS. SWIFT: Objection. Mischaracterizes.

11:16:38 6 **A** That does not mean that the pharmacist --

11:16:41 7 THE COURT: Overruled.

11:16:41 8 **A** -- did not do their due diligence.

11:16:43 9 **Q** That wasn't my question, ma'am.

11:16:44 10 I said for them to call and get the pharmacist to go
11:16:47 11 look in the file cabinet to find it to read it to them over
11:16:50 12 the telephone, that's assuming that it's one of the 60
11:16:52 13 percent where there was compliance, right?

11:16:56 14 **A** Yes.

11:16:56 15 **Q** And that's why you recognized that it would have been
11:17:03 16 a better system for years to have those entered into the
11:17:06 17 computer, right?

11:17:11 18 **A** I wanted to have an electronic good faith dispensing
11:17:16 19 in our computer system done within our work flow. I had
11:17:20 20 asked for that. I wanted it to make it easier for the
11:17:23 21 pharmacists. And I did indeed do that.

11:17:25 22 And, yes, I did not get it done right away. I got it
11:17:29 23 completed in 2019. It was a very large enhancement in our
11:17:33 24 computer system.

11:17:34 25 **Q** You got it completed at the end of 2019.

11:17:39 1 **A** Okay.

11:17:40 2 **Q** Right?

11:17:40 3 MR. LANIER: And, Your Honor, if we could pass
11:17:45 4 out, please, Plaintiffs' Exhibit 20795.

11:18:02 5 **Q** Ma'am, do you have 20795 in front of you?

11:18:05 6 **A** I do.

11:18:06 7 **Q** This is an e-mail from you dealing with this subject,
11:18:08 8 isn't it?

11:18:08 9 **A** Yes.

11:18:09 10 **Q** There is an e-mail from you that's dated right before
11:18:12 11 Thanksgiving.

11:18:15 12 **A** Yes.

11:18:15 13 **Q** November 21, 2019?

11:18:18 14 **A** Correct.

11:18:19 15 **Q** And it talks about the electronic good faith
11:18:24 16 dispensing pilot.

11:18:25 17 Do you see this?

11:18:26 18 **A** Yes.

11:18:26 19 **Q** This is talking about actually having the good faith
11:18:31 20 dispensing checklist in the computer, isn't it?

11:18:34 21 **A** A form of it, yes.

11:18:38 22 **Q** You said, "Oh, yes, I will."

11:18:44 23 This was in reply to an e-mail. We should look at
11:18:46 24 that first.

11:18:47 25 "Hi, Al/Tasha, can you keep us posted on how this

11:18:53 1 goes? Seems like this could be a big win, but assume the
11:18:57 2 pilot will validate or not."

11:18:59 3 Do you see that?

11:18:59 4 **A** Yes.

11:18:59 5 **Q** Because y'all were initially doing this just as a
11:19:02 6 pilot program at the end of 2019, correct?

11:19:04 7 **A** We always pilot new computer enhancements to make sure
11:19:08 8 that it's working as intended. So, yeah, it was a pilot.

11:19:12 9 **Q** I'm not fussing it, ma'am, I'm just pointing it out so
11:19:15 10 that this makes sense.

11:19:16 11 **A** Okay. Then that's correct.

11:19:17 12 **Q** Okay. Thank you.

11:19:18 13 You said, "Oh, yes, I will. This is going to be
11:19:23 14 great. I'll have the ability to pull data on the back end,
11:19:27 15 and there won't be Wyeth ability to bypass the checklist as
11:19:34 16 there is today."

11:19:35 17 What did you mean by Wyeth ability?

11:19:38 18 **A** That had to have been an auto correct. I don't know
11:19:43 19 what Wyeth ability is.

11:19:45 20 But the way our system has been designed is that if
11:19:50 21 the drug is -- required a checklist, the pharmacy staff have
11:19:57 22 to stop and enter in the information or it is calculated for
11:20:04 23 them in the process of computer system while they're filling
11:20:06 24 the prescription.

11:20:08 25 **Q** Okay. So the answer to my question is you don't know,

11:20:10 1 right?

11:20:10 2 **A** I don't know what Wyeth is, no.

11:20:13 3 **Q** Thank you.

11:20:13 4 "There won't be" -- whatever Wyeth is or is not with
11:20:18 5 auto correct -- "ability to bypass the checklist as there is
11:20:23 6 today."

11:20:24 7 Do you see that?

11:20:25 8 **A** I do.

11:20:25 9 **Q** Because as of this date, there is an ability to bypass
11:20:32 10 the checklist in the computer, correct?

11:20:34 11 **A** Because there was no checklist in the computer, it was
11:20:38 12 a hard copy piece of paper that may or may not have been
11:20:41 13 done, as you proved in the audit and we saw.

11:20:43 14 **Q** Is that a "yes" answer?

11:20:45 15 **A** Yes.

11:20:45 16 **Q** All right. So the question was, as of this date,
11:20:50 17 there is an ability to bypass the checklist. Answer is yes?

11:20:53 18 **A** Yes.

11:20:54 19 **Q** Then you say, "I have been wanting to do this from day
11:20:59 20 one, and Kermit wouldn't let me."

11:21:02 21 What is Kermit's job?

11:21:04 22 **A** Kermit was the president when I first became in role.

11:21:11 23 **Q** The president of Walgreens?

11:21:12 24 **A** Yes.

11:21:13 25 **Q** The president of Walgreens is making decisions on

11:21:18 1 whether or not these checklists can be entered into the
11:21:23 2 computer?

11:21:25 3 **A** Okay, that's not what that says, so --

11:21:27 4 **Q** That's my question.

11:21:28 5 **A** Okay. Is it okay if I clarify?

11:21:30 6 **Q** Yeah, but here, let me understand this first.

11:21:33 7 "Kermit wouldn't let me."

11:21:37 8 **A** Yeah.

11:21:37 9 **Q** What do you mean by he wouldn't let you?

11:21:40 10 **A** So each year we have to submit budget requests for
11:21:48 11 projects we want to do. When I say "we," it's not just me.
11:21:50 12 Walgreens is a huge organization. There's lots of business
11:21:53 13 units. We all have to submit projects that we want to have
11:21:58 14 done into all areas of the company, our computer system and
11:22:03 15 what have you.

11:22:03 16 Kermit asked that we handle this operationally because
11:22:12 17 we were in the process of building a new computer system,
11:22:15 18 and he did not want it built twice, meaning we're not going
11:22:20 19 to spend time and effort building in IntercomPlus when we
11:22:24 20 know we have this new computer system that is going to be
11:22:29 21 coming.

11:22:29 22 That new computer system has not come to fruition yet,
11:22:32 23 and that is why I was able to get the electronic good faith
11:22:36 24 dispensing checklist added in our existing computer system.

11:22:43 25 **Q** All right, ma'am, then I go back to my question.

11:22:45 1 Are you saying that the president of Walgreens is
11:22:48 2 making a decision on this issue?

11:22:51 3 **A** Yes, he did.

11:22:52 4 **Q** And you wanted from day one, I assume you mean back to
11:22:57 5 2012 when you took over the job to build from the ground up,
11:23:02 6 develop, change, and improve the policies and procedures?

11:23:05 7 **A** Yes.

11:23:05 8 **Q** So for seven years you've wanted to do this, and they
11:23:13 9 wouldn't do it, right?

11:23:15 10 **A** We didn't -- that is correct, because we were in the
11:23:19 11 process of changing computer systems and --

11:23:22 12 **Q** Over -- I'm sorry.

11:23:23 13 **A** Sorry.

11:23:23 14 **Q** No, that's my fault.

11:23:26 15 **A** And so they asked us to handle this operationally,
11:23:30 16 which we did with the paper checklist.

11:23:32 17 **Q** So for seven years they're in the process of changing
11:23:38 18 the computer system?

11:23:39 19 **A** Yes.

11:23:39 20 **Q** And they don't have an ability -- you're scanning in
11:23:47 21 prescriptions already, aren't you?

11:23:48 22 **A** We are scanning in prescriptions.

11:23:51 23 **Q** And you're telling us the computer system wouldn't let
11:23:54 24 you scan in the good faith dispensing checklist as well as
11:23:58 25 the prescription?

11:24:00 1 **A** Oh, I understand what you're asking.
11:24:02 2 We did not scan it in as part of the policy. We just
11:24:07 3 scanned in the prescriptions that were legally required, and
11:24:14 4 the checklists were attached to those hard copies at store
11:24:16 5 level.

11:24:17 6 **Q** And so you've been wanting to do this from day one,
11:24:21 7 but for seven years you haven't been able to. The president
11:24:25 8 weighs in. And you say, "this is a huge win for my team and
11:24:31 9 the field." True?

11:24:32 10 **A** Yeah, true.

11:24:33 11 **Q** And then you say, "The next phase of this enhancement
11:24:39 12 (as long as it doesn't get reprioritized)," do you see that?

11:24:45 13 **A** I do.

11:24:46 14 **Q** Would you agree with me that if the company had viewed
11:24:52 15 this as a priority item, they could have done it sooner than
11:25:00 16 seven years?

11:25:00 17 **A** But when you say priority item, you have to consider
11:25:02 18 all the other things of decisions that they're getting made.
11:25:05 19 When I already have a policy in place and I already have a
11:25:09 20 process, they were weighing the fact that that was already
11:25:13 21 being handled operationally, and we were going to get rid of
11:25:18 22 our existing computer system for a new computer system. We
11:25:22 23 have the plan to put what we got finally in IntercomPlus in
11:25:28 24 the new computer system when it launches.

11:25:30 25 **Q** But, ma'am, look at what you're saying here. This

11:25:37 1 will "give us the ability to require a checklist for high
11:25:44 2 morphine milligram equivalent prescriptions for chronic
11:25:48 3 patients, like Percocet, Vicodin."

11:25:54 4 **A** Correct.

11:25:54 5 **Q** And we will be able to configure the quantity and drug
11:25:58 6 instead of only the drug as it is today. That way we can
11:26:00 7 reduce steps for acute fills and focus more time on chronic
11:26:04 8 fills."

11:26:05 9 This is good for safety, isn't it?

11:26:10 10 **A** Sure.

11:26:11 11 **Q** And this thing that's good for safety, if it had been
11:26:17 12 given to you, the ability to do it seven years earlier,
11:26:21 13 would have been good for safety seven years earlier, right?

11:26:24 14 **A** We have lots of things in place for safety. But, yes,
11:26:28 15 it would be an added safety.

11:26:30 16 **Q** In other words, the answer to my question is "yes,"
11:26:35 17 right?

11:26:35 18 **A** Yes. We have lots of things for safety in our
11:26:37 19 computer system. And, yes, it would have been an additional
11:26:41 20 safety measure.

11:26:43 21 **Q** Yeah. And I'm not fussing that you have lots of good
11:26:46 22 things in your computer system for safety. You've probably
11:26:51 23 got things for convenience. You can probably tell us
11:26:53 24 everything -- tissue we've ever bought there if we use our
11:26:57 25 card or something. I'm not fussing that. I'm just asking a

11:27:00 1 very simple question.

11:27:00 2 This thing that's good for safety, if it had been

11:27:05 3 given to you, the ability to do it seven years earlier,

11:27:09 4 would have been good for safety seven years earlier, right?

11:27:15 5 **A** Yes.

11:27:15 6 **Q** Answer is yes, right?

11:27:16 7 **A** Yes.

11:27:16 8 **Q** Now, the second page talks about why this is

11:27:29 9 important, and I'd like you to look at those bullet points.

11:27:32 10 **A** Sorry, can you help me with this document? I don't
11:27:36 11 know what this is.

11:27:36 12 **Q** Sorry. This is that Plaintiffs' 20795, the one that
11:27:39 13 we're talking about.

11:27:40 14 **A** Okay. Thanks.

11:27:41 15 **Q** You got it? All right.

11:27:43 16 Second page talks about why this is important.

11:27:49 17 Do you see that section?

11:27:51 18 **A** Yes.

11:27:51 19 **Q** And it gives us a couple of bullet points, four of
11:27:54 20 them.

11:27:55 21 It "provides enhanced ability for pharmacists to
11:28:02 22 document their good faith dispensing review."

11:28:04 23 That's a good thing, isn't it?

11:28:06 24 **A** Yes.

11:28:06 25 **Q** That helps make sure that the records are right,

11:28:10 1 correct?

11:28:10 2 **A** It helps make sure that there's documentation on the
11:28:15 3 prescription.

11:28:16 4 **Q** In other words, that the records are right, correct.

11:28:21 5 Documentation, I'm --

11:28:23 6 **A** Thank you.

11:28:23 7 **Q** I'm not arguing terms. I'm just trying to make sure
11:28:26 8 we've got a clear record.

11:28:27 9 **A** I understand, but there's a difference between records
11:28:29 10 and documentation.

11:28:29 11 **Q** Okay. Thank you for fixing that. This makes a record
11:28:33 12 and we want it to be right.

11:28:34 13 So there's -- you're trying to make sure that the
11:28:39 14 documentation is correct, right?

11:28:41 15 **A** Yes.

11:28:41 16 **Q** That's important for patient safety, correct?

11:28:44 17 **A** Yes.

11:28:45 18 **Q** It's important for record keeping, isn't it?

11:28:48 19 **A** Yes.

11:28:50 20 **Q** It's what your stores were failing at in the audit, or
11:28:53 21 a number of them, right?

11:28:54 22 **A** Some of the stores, yes.

11:28:58 23 **Q** It makes a difference in patient safety at times,
11:29:01 24 doesn't it?

11:29:06 25 **A** I wouldn't agree that it makes at times --

11:29:10 1 **Q** Let me ask it this way.

11:29:12 2 **A** Okay.

11:29:12 3 **Q** This can make a difference in patient safety, can't

11:29:15 4 it?

11:29:15 5 **A** Yes.

11:29:16 6 **Q** Thank you.

11:29:17 7 Through good faith dispensing evaluation, second

11:29:22 8 bullet point, and detailed -- "Thorough GFD evaluation and

11:29:29 9 detailed documentation ensures patient safety."

11:29:32 10 Do you see that?

11:29:33 11 **A** Yes.

11:29:33 12 **Q** So this is something that you wanted to have in place

11:29:38 13 seven years earlier to ensure patient safety, but it's

11:29:42 14 finally going to get done seven years later, right?

11:29:46 15 **A** In an electronic format. It was already being done

11:29:50 16 when the pharmacists were processing the prescriptions and

11:29:52 17 doing their due diligence when filling prescriptions.

11:29:56 18 **Q** No, ma'am. This is talking about why this, this

11:29:58 19 electronic system, is important.

11:30:00 20 Do you see that?

11:30:01 21 **A** Yes.

11:30:02 22 **Q** So the electronic system is important because the

11:30:04 23 thorough evaluation and detailed documentation will ensure

11:30:08 24 patient safety.

11:30:09 25 Do you see that?

11:30:10 1 **A** I see it.

11:30:10 2 **Q** That's a new change that was not present for the seven
11:30:16 3 years you tried to get this system, right?

11:30:20 4 **A** This electronic good faith dispensing within our

11:30:23 5 system was new, but ensuring that we have proper

11:30:27 6 documentation and that we're taking care of patient safety

11:30:30 7 has always been there.

11:30:31 8 **Q** No, ma'am, that -- we've looked at the audit.

11:30:35 9 **A** Again, that doesn't mean that the pharmacist was not

11:30:39 10 doing their due diligence.

11:30:40 11 **Q** But it doesn't mean they were, doesn't it?

11:30:43 12 **A** Correct.

11:30:43 13 **Q** I mean, so it's like pin the tail on the donkey, while

11:30:47 14 your eyes are closed, yeah, you might hit it but you might

11:30:50 15 not, there's no way to tell unless you open your eyes, is

11:30:56 16 there?

11:30:56 17 **A** What was the question?

11:30:57 18 **Q** Y'all play pin the tail on the donkey up here?

11:31:00 19 **A** What's that?

11:31:01 20 **Q** Okay. That's a Texas game maybe.

11:31:03 21 Ma'am, all I'm driving at is, you can't make an

11:31:08 22 assumption if you don't have documentation, right?

11:31:10 23 **A** You can't make an assumption when you don't have

11:31:13 24 documentation that the pharmacist is not doing their due

11:31:16 25 diligence either.

11:31:16 1 Q Well, you can make an assumption they're not doing
11:31:18 2 their job, they're not complying with policy, can't you?

11:31:28 3 MS. SWIFT: Objection.

11:31:28 4 THE COURT: If that's the question, you can
11:31:29 5 answer the question.

11:31:31 6 **A** The audit showed that there were some locations that
11:31:33 7 were not following policy a hundred percent.

11:31:36 8 Q All right. I'm almost through here.

11:31:39 9 But "Thorough GFD evaluation and detailed
11:31:42 10 documentation ensures patient safety and protects Walgreens
11:31:45 11 and our pharmacists."

11:31:47 12 You see that?

11:31:47 13 | A Yes.

11:31:51 14 Q "This new process will allow for good faith dispensing
11:31:55 15 chain-wide reporting and monitoring at the corporate support
11:31:59 16 center and more efficient reporting to federal and state
11:32:04 17 entities, including the DEA."

11:32:07 18 | Do you see that as well?

11:32:08 19 | A I do.

11:32:08 20 Q All very good things, right?

11:32:12 21 | **A** Yes.

11:32:13 22 Q All things that would have been good seven years
11:32:16 23 earlier, wouldn't they?

11:32:17 24 **A** Easier seven years -- seven years earlier, but not --
11:32:25 25 I mean, we were already doing that.

11:32:27 1 **Q** Okay. So this isn't important because you're already
11:32:29 2 doing this stuff?

11:32:29 3 **A** We're doing it on paper. The reason why we're doing
11:32:32 4 it for electronic is so that we could have a centralized
11:32:38 5 reporting so when the DEA called and said they wanted --
11:32:40 6 they know about our checklist, and they asked for our
11:32:43 7 checklist, instead of us having to call the store and asking
11:32:48 8 for the checklist to be, you know, scanned up, we were able
11:32:50 9 to pull that data electronically in our computer system
11:32:55 10 today.

11:32:55 11 **Q** All right. So how were y'all monitoring at the
11:32:59 12 corporate support center this chain-wide reporting?

11:33:03 13 **A** Through store walks, following up with different
11:33:06 14 audits, through the BCI, through our field leadership,
11:33:10 15 through train the trainer.

11:33:14 16 **Q** So the process for monitoring is what you described to
11:33:17 17 us before. Y'all would audit and find out it's not being
11:33:20 18 done a lot of time, y'all would have store walks and we'd
11:33:25 19 get the evidence of that that we've looked at for Trumbull
11:33:30 20 County.

11:33:30 21 And you don't think that the new process would be much
11:33:33 22 better?

11:33:33 23 **A** Of course. That's why I wanted to do it.

11:33:35 24 **Q** Okay. So to say "we were already doing that," you
11:33:39 25 weren't doing it as well as you'll be able to do it now,

11:33:43 1 fair?

11:33:43 2 **A** Correct.

11:33:43 3 **Q** "There will now be increased transparency for our
11:33:49 4 pharmacy team members into a full patient profile that
11:33:53 5 includes all good faith dispensing documentation."

11:33:57 6 Do you see that?

11:33:58 7 **A** I do.

11:33:58 8 **Q** And that's also a good thing, isn't it?

11:34:02 9 **A** Sure.

11:34:02 10 **Q** Okay.

11:34:03 11 MR. LANIER: Your Honor, I'll pass the
11:34:04 12 witness.

11:34:05 13 Thank you, ma'am.

11:34:09 14 MS. SWIFT: Your Honor, may we have just a few
11:34:11 15 minutes to get set up?

11:34:12 16 THE COURT: Sure.

11:34:13 17 MS. SWIFT: Thank you.

11:34:22 18 THE WITNESS: Your Honor, may I go to the
11:34:24 19 restroom?

11:34:24 20 THE COURT: Oh, yes.

11:35:25 21 (Pause in proceedings.)

11:39:19 22 THE COURT: Okay. We'll now have examination
11:39:21 23 by Ms. Swift for Walgreens.

11:39:28 24 MS. SWIFT: Thank you, Your Honor.

11:39:29 25 May I proceed?

11:39:30 1 THE COURT: Yes.

11:39:32 2 MS. SWIFT: Good morning, ladies and gentlemen
11:39:34 3 of the jury. Kate Swift again for the Walgreens.

11:39:37 4 NATASHA POLSTER

11:39:37 5 - - - - -

11:39:37 6 DIRECT EXAMINATION

11:39:38 7 BY MS. SWIFT:

11:39:38 8 Q Good morning, Ms. Polster.

11:39:39 9 A Good morning.

11:39:40 10 Q It's been a while.

11:39:41 11 A Yes.

11:39:42 12 Q Based on your experience over the past 30 years, has
11:39:44 13 there ever been a time when Walgreens pharmacists weren't
11:39:49 14 concerned about preventing the diversion of controlled
11:39:53 15 substances?

11:39:53 16 A Not to my knowledge, no.

11:39:54 17 Q And does that concern include concern about the
11:39:58 18 diversion of opioids?

11:40:00 19 MR. WEINBERGER: Objection, Your Honor.

11:40:01 20 A Yes.

11:40:04 21 THE COURT: Overruled.

11:40:04 22 Q You were asked questions by the plaintiffs' lawyer
11:40:11 23 about when you believed the opioid crisis began.

11:40:13 24 Do you recall those questions?

11:40:14 25 A I do.

11:40:15 1 Q I believe you said you thought it was around 2011, and
11:40:20 2 you may have noticed that the plaintiffs' lawyer latched
11:40:23 3 onto that?

11:40:23 4 MR. WEINBERGER: Objection, Your Honor.

11:40:24 5 THE COURT: Well, yeah, sustained as to the
11:40:28 6 comment about what the plaintiffs' lawyer latched onto.

11:40:32 7 Just please stick to the question.

11:40:33 8 MR. WEINBERGER: Your Honor, this should be on
11:40:34 9 direct examination.

11:40:37 10 THE COURT: Well, Ms. Swift can certainly
11:40:42 11 refer to a question that the witness was asked. That's
11:40:44 12 proper on direct or cross. It was the sort of editorial
11:40:48 13 comment that I sustained the objection to, not the direction
11:40:51 14 to a question.

11:40:55 15 BY MS. SWIFT:

11:40:55 16 Q Ms. Polster, did you intend to say by your testimony
11:40:57 17 that there were no problems with prescription opioid abuse
11:41:00 18 before 2011?

11:41:01 19 | **A** No, I did not.

11:41:01 20 Q Now, I'd like to take a step back and ask you a few
11:41:07 21 preliminary questions about Walgreens' policies and
11:41:10 22 procedures.

11:41:10 23 Has Walgreens had policies and procedures in place
11:41:16 24 around the good faith dispensing of opioids for as long as
11:41:19 25 you've been a pharmacist?

11:41:20 1 MR. WEINBERGER: Objection.

11:41:21 2 THE COURT: Well, yeah, now we're getting too
11:41:26 3 leading, Ms. Swift.

11:41:32 4 Q Does Walgreens have procedures in place around the
11:41:35 5 good faith dispensing of opioids?

11:41:36 6 A Yes.

11:41:36 7 Q Do those procedures include red flags that the
11:41:43 8 pharmacists are supposed to look out for?

11:41:44 9 MR. WEINBERGER: Objection.

11:41:45 10 THE COURT: Overruled.

11:41:46 11 A Yes.

11:41:47 12 Q How long has Walgreens had policies like that in
11:41:49 13 place?

11:41:51 14 A Ever since I've been a pharmacist, I remember those
11:41:53 15 policies being in place.

11:41:54 16 Q When did you become a pharmacist?

11:41:55 17 A I graduated in 1989.

11:42:00 18 Q All right. I'd like to give you a little bit of a
11:42:21 19 road map where I'm going to go for both your sake and the
11:42:24 20 jury's sake. I'm going to ask you questions about your
11:42:27 21 background and education, I'm going to ask you questions
11:42:30 22 about Walgreens' policies and procedures, I'll ask you
11:42:35 23 questions about support and tools for pharmacists, and then
11:42:39 24 I will ask you some questions to follow up on what the
11:42:42 25 plaintiffs' lawyer did about how Walgreens monitors

11:42:46 1 pharmacists. Okay?

11:42:47 2 **A** Yes.

11:42:47 3 **Q** I want to start with your background.

11:42:53 4 Ms. Polster, where are you from originally?

11:42:55 5 **A** Colorado.

11:42:56 6 **Q** Where is your family from originally?

11:42:58 7 **A** My father's Lebanese, and my mother is from America.

11:43:04 8 And we grew up for the most part in Colorado.

11:43:07 9 **Q** When we were speaking the other night, you told me a

11:43:09 10 story about why you became a pharmacist, and it involved

11:43:14 11 your uncle in Lebanon.

11:43:15 12 Would you please explain that to the jury?

11:43:17 13 **A** Sure. I knew that when I wanted to go to college, I
11:43:23 14 wanted to do something in the medical field. And my uncle
11:43:25 15 in Lebanon is a doctor. My father grew up in a very small
11:43:31 16 town in northern Lebanon. And anyway, my uncle's a doctor,
11:43:37 17 and literally gets paid with goats. The town is so small.

11:43:43 18 When I was -- we'd spend the summers over there
11:43:47 19 sometimes, and when he knew I wanted to be a doctor, there
11:43:50 20 was an accident in town where a young boy fell and cut his
11:43:55 21 groin and was bleeding pretty badly. And so my uncle sent
11:44:00 22 for me to come down and watch as he treated this young boy.

11:44:07 23 And I have to set it up so that you understand why I
11:44:10 24 chose the difference between being a doctor and choosing my
11:44:13 25 path to be a pharmacist. We didn't have good air

11:44:17 1 conditioning, there weren't the clinics like the hospitals
11:44:19 2 we have today. And I walked down in that clinic, and it was
11:44:23 3 hot and there was blood everywhere and I was like, oh, man,
11:44:27 4 I can't -- I can't do it.

11:44:29 5 So I knew then and there I didn't want to be a doctor.

11:44:32 6 **Q** Let me stop you right there, Ms. Polster.

11:44:33 7 How old were you at this point in time?

11:44:35 8 **A** 15.

11:44:35 9 **Q** Okay. I didn't mean to interrupt.

11:44:37 10 **A** And then shortly thereafter, when I turned 16 I began
11:44:42 11 working at Walgreens. And one of the pharmacists asked me
11:44:46 12 what I wanted to do. I told him that story. He said, do
11:44:49 13 you like math and science? And I said yes. And he said,
11:44:53 14 you should consider pharmacy.

11:44:54 15 And so I did, and I made my decision when I was a
11:44:58 16 junior in high school to go to pharmacy school.

11:45:00 17 **Q** You've worked -- have you worked at Walgreens since
11:45:03 18 1982? Is that what I recall you saying yesterday?

11:45:06 19 **A** I have.

11:45:06 20 **Q** Did you work at Walgreens consistently throughout that
11:45:09 21 whole entire time since then?

11:45:10 22 **A** I did.

11:45:10 23 **Q** Did you work at Walgreens while you were in pharmacy
11:45:14 24 school in Colorado?

11:45:15 25 **A** I did.

11:45:15 1 **Q** What did you do, I think you said that you started out
11:45:20 2 as a cashier. When did you start working in the pharmacy
11:45:23 3 part of the store?

11:45:23 4 **A** Probably when I was a senior in high school, I would
11:45:28 5 work back there when, you know, a technician was on
11:45:32 6 vacation, and then when I -- my first year in college I was
11:45:35 7 back in the pharmacy full-time.

11:45:36 8 **Q** When you were first working back in the pharmacy, what
11:45:39 9 kind of things did you do?

11:45:40 10 **A** Technician duties, typing prescriptions, you know,
11:45:45 11 helping at the cash register, things like that.

11:45:48 12 **Q** Did you fill prescriptions?

11:45:50 13 **A** No.

11:45:50 14 **Q** Then at some point while you were still in pharmacy
11:45:56 15 school, did you move -- well, let me take a step back.

11:45:59 16 Where did you go to pharmacy school?

11:46:01 17 **A** University of Colorado.

11:46:02 18 **Q** And where is that?

11:46:03 19 **A** It's in Boulder.

11:46:04 20 **Q** Did you live in Boulder the entire time you were in
11:46:06 21 pharmacy school?

11:46:06 22 **A** Not the whole time, but for those three years where it
11:46:13 23 was required where I was on campus. And then when you move
11:46:17 24 to the externship programs, I was in Colorado Springs.

11:46:22 25 **Q** Why did you move to Colorado Springs?

11:46:23 1 **A** My husband was transferred.

11:46:25 2 **Q** What did your husband do at a time for a living?

11:46:29 3 **A** He was a store manager at that time.

11:46:31 4 **Q** Where did he work?

11:46:31 5 **A** He worked for Walgreens in Colorado Springs.

11:46:35 6 **Q** You said he was a store manager. Is your husband a

11:46:39 7 pharmacist?

11:46:39 8 **A** He is not.

11:46:39 9 **Q** Does anyone else in your family work at Walgreens or

11:46:43 10 did they ever?

11:46:43 11 **A** My mother-in-law worked for Walgreens. She was a

11:46:46 12 bookkeeper and a cosmetician. And my daughter, who is a

11:46:51 13 finance major, did an internship at Walgreens one summer

11:46:57 14 when she was in college.

11:46:58 15 **Q** What is a cosmetician?

11:47:01 16 **A** It's somebody that helps run the cosmetic department,

11:47:04 17 can help customers with cosmetics or shampoos or hair color.

11:47:10 18 **Q** All right. I think you've said a couple of times you

11:47:14 19 graduated from pharmacy school in 1989.

11:47:17 20 Did you become a staff pharmacist at Walgreens at that

11:47:20 21 time?

11:47:20 22 **A** I was a float pharmacist first.

11:47:23 23 **Q** What's a float pharmacist?

11:47:24 24 **A** It's a pharmacist that doesn't have one full-time

11:47:27 25 store. They go from store to store to cover vacations and

11:47:32 1 sick days and things like that.

11:47:34 2 Q Okay. We might come back to that later on.

11:47:36 3 So you started as a float pharmacist. At some point
11:47:39 4 did you become a full-time pharmacist at a Walgreens store?

11:47:42 5 A I did.

11:47:43 6 Q When was that?

11:47:45 7 A Probably sometime in 1990 I got a full-time position
11:47:53 8 at a store in Colorado Springs.

11:47:55 9 Q At some point after that, were you promoted to
11:47:59 10 pharmacy manager?

11:48:00 11 A Yeah, after -- my husband was transferred again to
11:48:04 12 St. Louis, and I was a staff pharmacist for a while in
11:48:08 13 St. Louis, and then I became a pharmacy manager in
11:48:10 14 St. Louis.

11:48:10 15 Q All right. And at some point -- I don't want to mess
11:48:13 16 up the timeline, but at some point were you promoted from
11:48:16 17 pharmacy manager to pharmacy supervisor?

11:48:19 18 A Yeah, that was after we moved to Oklahoma City, I was
11:48:25 19 promoted from Oklahoma City pharmacy manager to a pharmacy
11:48:29 20 supervisor in Kansas City.

11:48:32 21 Q Okay. Let me break that down a little bit.

11:48:34 22 What is the difference between a pharmacy manager and
11:48:37 23 a pharmacy supervisor?

11:48:38 24 A A pharmacy manager oversees one location, and a
11:48:41 25 pharmacy supervisor oversees multiple locations.

11:48:45 1 **Q** Do you have to be a pharmacist to be a pharmacy
11:48:48 2 manager?

11:48:48 3 **A** Yes.

11:48:48 4 **Q** Do you have to be a pharmacist to be a pharmacy
11:48:50 5 supervisor?

11:48:51 6 **A** Yes.

11:48:52 7 **Q** Okay. All right. So you testified that you and your
11:48:59 8 husband moved from Colorado to St. Louis, and I believe you
11:49:01 9 said you then moved to Oklahoma City. Is that right?

11:49:05 10 **A** Correct.

11:49:05 11 **Q** What did your husband do when you moved to Oklahoma
11:49:07 12 City?

11:49:07 13 **A** We were -- I was an emerging leader pharmacy
11:49:13 14 manager --

11:49:13 15 **Q** I'm sorry.

11:49:15 16 **A** Sorry.

11:49:15 17 **Q** For the court reporter's sake, I'm just going to ask
11:49:18 18 you to slow down a little bit. I didn't quite catch what you
11:49:20 19 said. I apologize.

11:49:22 20 **A** I was an emerging leader pharmacy manager.

11:49:24 21 **Q** What is that?

11:49:26 22 **A** In addition to the responsibilities of running a
11:49:28 23 pharmacy, I also had responsibility for hiring and training
11:49:33 24 new pharmacists for the market, and my husband was an
11:49:37 25 emerging leader store manager who oversaw a store, and then

11:49:41 1 he also did hiring and training for the market.

11:49:43 2 Q Before you and your husband moved to Oklahoma City,
11:49:48 3 were there Walgreens stores in Oklahoma City?

11:49:49 4 A No.

11:49:50 5 Q Did you and your husband open Walgreens stores in
11:49:53 6 Oklahoma City?

11:49:53 7 A Yes. We assisted in opening and staffing the new
11:49:57 8 stores.

11:49:57 9 Q How long were you in Oklahoma City?

11:49:59 10 A For 18 months.

11:50:00 11 Q And then where did you move next?

11:50:02 12 A Kansas City.

11:50:03 13 Q What did you and your husband do in Kansas City?

11:50:05 14 A My husband was the emerging leader store manager of
11:50:10 15 Kansas City opening the new market, and I was the pharmacy
11:50:13 16 supervisor overseeing the pharmacies of that market as we
11:50:18 17 grew the market with -- in the stores.

11:50:21 18 Q Before you and your husband moved to Kansas City, were
11:50:25 19 there Walgreens stores in Kansas City?

11:50:26 20 A No.

11:50:27 21 Q Did you -- if I'm understanding your testimony, did
11:50:31 22 you and your husband open stores in Kansas City?

11:50:32 23 A We did.

11:50:33 24 Q About what does it entail to open a new market like
11:50:38 25 that? Does that involve hiring people?

11:50:40 1 **A** Yes.

11:50:40 2 **Q** Does it involve training people?

11:50:42 3 **A** Yes.

11:50:42 4 **Q** How many stores did you and your husband open in

11:50:45 5 Kansas City?

11:50:45 6 **A** For me as a pharmacy supervisor, I went from zero to

11:50:53 7 30 stores in the three-year period of time that we were

11:50:57 8 there.

11:50:58 9 **Q** Then -- you just said you were in Kansas City for

11:51:06 10 three years.

11:51:07 11 Where did you go after that?

11:51:08 12 **A** Chicago.

11:51:08 13 **Q** What did you do when you got to Chicago?

11:51:10 14 **A** In Chicago I was a pharmacy supervisor before moving

11:51:15 15 to the support office.

11:51:16 16 **Q** I've heard you use this term the "support office" or

11:51:20 17 the "support center."

11:51:20 18 Can you explain what that means?

11:51:23 19 **A** Yeah. It is the central offices that the Walgreens

11:51:28 20 corporation has that have business units that support our

11:51:34 21 stores nationwide.

11:51:34 22 **Q** Give us just a very high level what you did in the

11:51:42 23 2000 to 2012 time frame in Chicago before you took your role

11:51:46 24 in pharmaceutical integrity, just briefly.

11:51:49 25 **A** Sure. So when I came up to the support center, I was

11:51:52 1 in charge of pharmacy operating systems. Those were systems
11:51:55 2 that did not include the dispensing prescriptions system.
11:52:02 3 It was the payroll system, the scheduling system. Sometimes
11:52:09 4 I helped with policies. I was responsible for work flow,
11:52:14 5 making sure that the pharmacy design made sense for the
11:52:19 6 pharmacy staff.

11:52:20 7 **Q** Then in 2012 you've already testified you took on a
11:52:24 8 new role as the head of pharmaceutical integrity.

11:52:29 9 Is that a fair characterization?

11:52:31 10 **A** Yes.

11:52:31 11 **Q** And I don't want to rehash it. I believe that you
11:52:37 12 said your responsibilities included executing on --

11:52:37 13 (Court reporter interjection.)

11:52:47 14 **Q** I'm just trying to orient you to where I'm going.

11:52:50 15 You already testified to what your responsibilities
11:52:51 16 were. Part of your responsibilities when you took over as
11:52:56 17 the head of pharmaceutical integrity, did they include
11:53:00 18 executing on compliance for both dispensing and distribution
11:53:08 19 of controlled substances?

11:53:09 20 **A** Yes.

11:53:10 21 **Q** Prior to 2012, when you came into your role, were
11:53:19 22 there other groups at Walgreens that handled that function
11:53:22 23 or those functions I should say?

11:53:23 24 **A** Yes.

11:53:24 25 **Q** Before your group, pharmaceutical integrity, was put

11:53:31 1 in place, were there people in the distribution centers who
11:53:37 2 were responsible for parts of that compliance function?

11:53:41 3 MR. WEINBERGER: Objection.

11:53:43 4 THE COURT: Overruled.

11:53:48 5 **A** Yes.

11:53:48 6 **Q** Before your group came into being in 2012, were there
11:53:56 7 people in loss prevention who were responsible for parts of
11:54:01 8 that compliance function?

11:54:02 9 **A** Yes.

11:54:03 10 **Q** What is loss prevention?

11:54:06 11 **A** Loss prevention is a business unit that has personnel
11:54:13 12 at the support center as well as folks that live within the
11:54:19 13 field, in the districts, that follow up with -- with the
11:54:23 14 stores. They're another set of eyes and ears for, you know,
11:54:29 15 checking to make sure that our controls storewide are in
11:54:35 16 place, to prevent loss of money or drugs or, you know,
11:54:41 17 merchandise, things like that.

11:54:44 18 **Q** Before you came into your role in 2012, were there
11:54:48 19 people in pharmacy inventory who had certain
11:54:52 20 responsibilities for the compliance functions we've been
11:54:54 21 discussing?

11:54:55 22 **A** I don't know exactly what the inventory folks'
11:55:03 23 responsibilities were, but we did have inventory people that
11:55:06 24 did order and manage controlled substances and all inventory
11:55:12 25 back in the pharmacy.

11:55:13 1 **Q** Before you came into your role in 2012, were there
11:55:17 2 other people that I haven't asked you about who were
11:55:21 3 responsible for pieces of the compliance functions that
11:55:24 4 we've been talking about?

11:55:25 5 **A** Yes.

11:55:28 6 **Q** How do you know that?

11:55:29 7 **A** We had and still do a compliance department that
11:55:40 8 will -- you know, that are -- you know, that are responsible
11:55:43 9 for our code of conduct training, that investigate hotlines
11:55:51 10 that would -- you know, that could be escalated from patient
11:55:55 11 or from an employee. We have, you know, our legal
11:56:00 12 department, we have our district leaders. You know,
11:56:05 13 Walgreens is a really big organization, and we have a lot of
11:56:09 14 people that are responsible for that kind of work.

11:56:13 15 **Q** Was one of the goals of your group when you were put
11:56:17 16 in place in late 2012 to bring those functions together?

11:56:21 17 **A** Yes.

11:56:21 18 **Q** You testified before that overseeing pharmaceutical
11:56:34 19 integrity is just a piece of your job; is that correct?

11:56:37 20 **A** Yes, a piece of my job today, correct.

11:56:40 21 **Q** What else are you responsible for?

11:56:41 22 **A** I'm responsible for the nationwide immunization
11:56:46 23 program that includes all vaccines including COVID vaccine.
11:56:52 24 I'm responsible for third-party operations, which includes
11:56:55 25 the processing and billing of patients' insurance

11:57:02 1 prescriptions. The state PDMP and reporting into the state
11:57:09 2 PDMP is part of my responsibilities, in addition to
11:57:13 3 electronic prescribing, as well as the pharmacy automation,
11:57:18 4 the machines that assist the pharmacy staff back in the
11:57:23 5 pharmacy.

11:57:24 6 **Q** What is your job title today?

11:57:26 7 **A** Divisional vice president of pharmacy quality
11:57:31 8 compliance and patient safety.

11:57:32 9 **Q** How many people work for you today?

11:57:40 10 **A** 83 maybe.

11:57:42 11 **Q** How many of those are particularly focused on
11:57:46 12 pharmaceutical integrity, the compliance function we've been
11:57:48 13 talking about?

11:57:49 14 **A** 12.

11:57:51 15 **Q** What are the backgrounds of people who work for you in
11:57:59 16 pharmaceutical integrity?

11:58:00 17 **A** I have a couple pharmacists. I have a former law
11:58:05 18 enforcement employee that then came to our loss prevention
11:58:08 19 department which then transferred to my department. I have
11:58:14 20 a couple folks that are really, really good at pulling data.
11:58:19 21 And then I have some analysts and coordinators that have
11:58:25 22 store experience that helped with, you know, pulling data,
11:58:35 23 controlled substance inventories, that kind of stuff.

11:58:36 24 **Q** So when you refer to your group as a support center,
11:58:40 25 are you talking about that group of pharmacists, former law

11:58:44 1 enforcement professionals, data analysts?

11:58:48 2 **A** Yes.

11:58:48 3 **Q** Who are -- who does the support center support?

11:58:52 4 **A** The -- well, the stores, but that particular business
11:58:59 5 unit is the pharmacy.

11:59:02 6 **Q** Are you still licensed as a pharmacist today?

11:59:04 7 **A** I am.

11:59:04 8 **Q** Do you hold a license in more than one state?

11:59:06 9 **A** I do.

11:59:06 10 **Q** Which states are you licensed in?

11:59:08 11 **A** Colorado and Illinois.

11:59:09 12 **Q** Do you still fill prescriptions today?

11:59:13 13 **A** I don't.

11:59:13 14 **Q** Why do you maintain your pharmacy licenses in multiple
11:59:16 15 states?

11:59:17 16 **A** You know, I worked really hard for that license. It's
11:59:21 17 pretty hard to decide to give up. And I've just kept it up
11:59:24 18 throughout the years.

11:59:27 19 **Q** Are pharmacists required to be licensed in all 50
11:59:32 20 states?

11:59:33 21 **A** No.

11:59:33 22 **Q** Are they required to be licensed in most states?

11:59:37 23 **A** They're required to be licensed in the state in which
11:59:40 24 they practice.

11:59:41 25 **Q** Oh, my question was not clear. I understand now I

11:59:44 1 couldn't said no.

11:59:45 2 If you want to be a pharmacist in any state in the
11:59:48 3 United States, do you have to be licensed in that state to
11:59:52 4 practice pharmacy?

11:59:52 5 **A** Yes.

11:59:52 6 **Q** Okay. Do you have to have a degree that's called a
11:59:59 7 PharmD?

11:59:59 8 **A** You do now, yes.

12:00:00 9 **Q** What is a PharmD?

12:00:01 10 **A** It is a doctor of pharmacy, and it is the designation
12:00:05 11 that you graduate with when you graduate from an accredited
12:00:10 12 pharmacy school.

12:00:11 13 **Q** Do you have to sit for an example to become a licensed
12:00:15 14 pharmacist?

12:00:15 15 **A** You do.

12:00:17 16 **Q** Do you have to take more than one exam?

12:00:19 17 **A** Yes.

12:00:19 18 **Q** Why do you have to take more than one exam to become a
12:00:22 19 pharmacist?

12:00:22 20 **A** There's the national board exam, and then there's the
12:00:26 21 state law exam.

12:00:29 22 **Q** Do you have to take the state law exam in every state
12:00:32 23 where you want to practice pharmacy?

12:00:33 24 **A** Yes.

12:00:34 25 **Q** How many state law exams have you taken?

12:00:37 1 **A** Five.

12:00:38 2 **Q** And is that because you were moving from Colorado to
12:00:41 3 Missouri to Oklahoma to -- I missed one.

12:00:45 4 **A** Kansas City.

12:00:47 5 **Q** Did you pass all of those state law exams?

12:00:49 6 **A** I did.

12:00:58 7 MS. SWIFT: Your Honor, I'm noticing the time.
12:01:00 8 I'm about to switch topics.

12:01:01 9 THE COURT: I was about to inquire whether
12:01:03 10 it's a good time to break.

12:01:05 11 Okay. Ladies and gentlemen, we'll take our lunch
12:01:07 12 recess. The usual admonitions. We'll pick up at 1:00 with
12:01:21 13 the balance of this witness's testimony.

12:01:40 14 (The jury is not present.)

12:01:42 15 MR. LANIER: Just one quick thing on the
12:01:43 16 record. Motion in limine number 42 was to preclude any
12:01:47 17 references to the COVID vaccine and administering it and
12:01:50 18 things like that. It was granted by the Court. It's been
12:01:54 19 violated. I'm sure it was just a mistake, but I do want to
12:01:57 20 remind the other side the importance of warning witnesses
12:02:01 21 about motions in limine that have been granted.

12:02:03 22 MS. SWIFT: Absolutely. My apologies.

12:02:05 23 It was inadvertent, Your Honor.

12:02:07 24 MR. LANIER: I don't think it was intentional.

12:02:08 25 THE COURT: Okay.

Polster (Direct by Swift)

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12:02:10 1 MR. LANIER: Thank you, Judge.

12:02:10 2 (A luncheon recess was taken at 12:02 p.m.)

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01:03:18 3 (In open court at 1:03 p.m.)

01:03:18 4 THE COURT: Everyone can be cede.

01:03:20 5 Before we bring out the jury, CVS and Walgreens just
01:03:24 6 filed an objection, I guess, to rulings on certain
01:03:29 7 designations. This pertains to Ms. Ashley. She's an
01:03:36 8 employee of the DEA; is that right?

01:03:40 9 MS. SWIFT: Former employee, Your Honor.

01:03:43 10 MR. WEINBERGER: Yes, she followed Rannazzisi
01:03:47 11 in that position.

01:03:47 12 THE COURT: All right. I don't see any reason
01:03:50 13 to show her -- well, this is designation, all right.

01:03:57 14 She doesn't need any press releases about anything. I
01:04:03 15 look to this testimony -- we don't need her to read
01:04:07 16 documents. The documents are in already. So I didn't see
01:04:13 17 any relevance from these designations that CVS and Walgreens
01:04:18 18 are now objecting to. It's already -- the documents are in.
01:04:22 19 There's been testimony that the documents are with the
01:04:26 20 corporation, and the documents say themselves they're with
01:04:30 21 the corporation. And if CVS or Walgreens puts anyone on to
01:04:34 22 say the opposite, that person is not going to leave the
01:04:36 23 stand intact after Mr. Lanier or Mr. Weinberger
01:04:40 24 cross-examine them.

01:04:42 25 MR. WEINBERGER: Can I address a response,

01:04:44 1 Your Honor, since I'm the one that did the deposition on the
01:04:49 2 dispensing side?

01:04:50 3 So there was extensive testimony, you can't just look
01:04:55 4 at it in isolation, Your Honor. There's extensive testimony
01:04:58 5 that she gave when directed -- on direct examination by the
01:05:05 6 defense lawyers.

01:05:06 7 THE COURT: Who? Who gave?

01:05:08 8 MR. WEINBERGER: That Ms. Ashley gave.

01:05:11 9 THE COURT: Yes.

01:05:11 10 MR. WEINBERGER: About whether -- that dealt
01:05:13 11 with the issue of whether or not the DEA provided guidance
01:05:18 12 on issues involving dispensing. You know, what were the --
01:05:24 13 what did the dispenser's handbook say, what did the -- the
01:05:33 14 pharmacist handbook, and varies other directives including
01:05:37 15 the provisions of the CSA.

01:05:38 16 The purpose of my putting in these documents as well
01:05:40 17 as the press releases was not just to put them in to
01:05:47 18 demonstrate that, for example, a Walgreens MOA applied to
01:05:51 19 Walgreens or that a Walgreens MOA was issued in a press
01:05:56 20 release by the DOJ that included a hyperlink to that MOA,
01:06:01 21 but that, as she testified, cases published in the Federal
01:06:10 22 Register, pronouncements by the DEA in the Federal Register,
01:06:22 23 press releases issued by the DOJ on behalf of the DEA, about
01:06:27 24 enforcement actions that were taken are notice not just to
01:06:30 25 who it was that the agreements were the subject of but

01:06:35 1 everybody else in the industry about what the DEA and the
01:06:41 2 Department of Justice expected with respect to their
01:06:44 3 dispensing practices.

01:06:45 4 And so that was the purpose of that examination.

01:06:52 5 It wasn't -- of course, it was done long before we
01:06:55 6 were in trial and long before we knew what was going to come
01:06:59 7 into evidence and what not in terms of the agreements.

01:07:04 8 But again, it's an entirely different purpose, Your
01:07:07 9 Honor. And I believe that I laid the foundation for that in
01:07:11 10 my examination of Ms. Ashley about the importance of --

01:07:15 11 THE COURT: I don't have time to go through
01:07:16 12 this line by line, all right? That's why we keep having
01:07:19 13 this, we'll forget about these depositions, we'll bring in
01:07:23 14 the people live and they can ask relevant questions.

01:07:27 15 MS. SWIFT: Your Honor, if I may respond very
01:07:29 16 briefly, all of the points that Mr. Weinberger just made,
01:07:31 17 that evidence is already in. You've already ruled that it
01:07:33 18 doesn't need to come in again.

01:07:34 19 THE COURT: Well, I don't know if we've had
01:07:36 20 specific testimony --

01:07:40 21 MS. SWIFT: I mean, the testimony in question
01:07:43 22 with respect to Walgreens relates to the 2013 settlement
01:07:46 23 agreement.

01:07:46 24 THE COURT: I'll allow the one question about
01:07:51 25 whether something was published in the Federal Register or

01:07:54 1 something or what -- what could be accessed, but we don't
01:07:58 2 need to admit press releases, they're inadmissible. And
01:08:03 3 we've had plenty of references to the documents. We don't
01:08:05 4 need the documents read in again and again.

01:08:07 5 MR. WEINBERGER: But, Your Honor, again in the
01:08:08 6 context of that -- well, then everything else about her
01:08:15 7 testimony, about whether she -- they did or didn't provide
01:08:19 8 guidance to the industry and they -- you know, they did in
01:08:23 9 some respects --

01:08:24 10 THE COURT: But assume she said they provided
01:08:26 11 a lot of guidance to the industry.

01:08:28 12 MR. WEINBERGER: Right, but she was also
01:08:30 13 examined about the things that they didn't say, that they
01:08:34 14 didn't provide guidance on. And this is exactly -- that's
01:08:36 15 exactly the point. When I'm examining her, I'm trying to
01:08:41 16 rebut that testimony that there was a significant amount of
01:08:46 17 guidance that was provided about dispensing practices, about
01:08:50 18 red flags, based upon the decisions and the MOAs that were
01:08:55 19 rendered.

01:08:56 20 THE COURT: Those aren't the --

01:09:00 21 MR. WEINBERGER: But you can't take those
01:09:02 22 questions in isolation, Your Honor. It's the -- I mean, I
01:09:06 23 think I should have an opportunity to have you consider --

01:09:10 24 THE COURT: Let's bring her in and you can ask
01:09:12 25 her those questions in a relevant way, all right? I mean --

01:09:17 1 MS. SWIFT: Your Honor, she's a third party.

01:09:19 2 She's outside the subpoena power.

01:09:20 3 THE COURT: Put her on video, all right? I

01:09:23 4 mean, as I said, I'm about done with this, okay? It just

01:09:26 5 isn't -- it isn't working.

01:09:28 6 MS. SWIFT: Your Honor, if we would have the

01:09:29 7 opportunity to talk to the plaintiffs about this.

01:09:31 8 Mr. Weinberger had the opportunity to ask the questions that

01:09:33 9 he is now seeking to have admitted.

01:09:35 10 THE COURT: I said I'm about done, so if you

01:09:39 11 all can't work this out, this witness will testify live by

01:09:42 12 video, okay, and you can ask her the questions you want and

01:09:44 13 I'll rule on them on the fly.

01:09:48 14 So I don't -- I can't carve it up because I don't know

01:09:51 15 what she was asked before, and I don't know if this is --

01:09:55 16 this may be responding to something. I don't know. But in

01:09:59 17 isolation is what I've got.

01:10:01 18 So if you all can't work it out, scratch your depo,

01:10:04 19 put her on live by video and you can ask her whatever

01:10:07 20 questions you want, both sides. All right?

01:10:10 21 MR. WEINBERGER: That's fine, Your Honor.

01:10:11 22 Thank you.

01:10:11 23 THE COURT: Okay. All right. Let's bring in

01:10:16 24 the jury.

01:11:52 25 (The jury is present at 1:11 p.m.)

01:11:53 1 THE COURT: Okay. Please be seated.

01:11:55 2 And Ms. Polster, you're still under oath.

01:11:59 3 Ms. Swift, you may continue your examination.

01:12:03 4 MS. SWIFT: Thank you, Your Honor.

01:12:06 5 Welcome back, Ms. Polster.

01:12:07 6 Good afternoon, everyone.

01:12:07 7 BY MS. SWIFT:

01:12:09 8 Q Ms. Polster, I'd like to ask you some questions about

01:12:11 9 the training that Walgreens provides to its pharmacists,

01:12:15 10 okay?

01:12:15 11 A Okay.

01:12:15 12 Q You were asked questions earlier about pharmacist

01:12:18 13 training and the addition of periodic training on good faith

01:12:23 14 dispensing as part of -- that you added as part of an

01:12:25 15 agreement with the DEA.

01:12:26 16 Do you remember those questions?

01:12:27 17 A Yes.

01:12:29 18 Q Does Walgreens provide training on good faith

01:12:33 19 dispensing for every new pharmacist when they're first hired

01:12:35 20 at Walgreens?

01:12:36 21 A Yes.

01:12:36 22 Q How long has Walgreens been doing that?

01:12:38 23 A Ever since I have been a pharmacist, I remember it

01:12:44 24 happening.

01:12:44 25 Q How long does that training, that new hire training,

01:12:50 1 take to complete, for the pharmacist?

01:12:54 2 **A** So a new hire pharmacist that has never worked for
01:12:57 3 Walgreens before has a minimum of two weeks of training that
01:13:02 4 is on the job between doing computer modules and then going
01:13:07 5 back into the pharmacy and practicing and going back and
01:13:13 6 forth to get comfortable with the practices at Walgreens.

01:13:16 7 In addition, there are -- I refer to them as PPLs,
01:13:22 8 which is our computer training software.

01:13:25 9 **Q** What does PPL stand for?

01:13:27 10 **A** I cannot remember. People learning something.

01:13:31 11 But we use that software to get the training down to
01:13:39 12 all of our employees, not just pharmacies but all employees.

01:13:44 13 **Q** Are you talking now still specifically about new hire
01:13:48 14 training?

01:13:48 15 **A** Yes. And depending on what the training is depends on
01:13:58 16 the time that that training would have to be completed.

01:14:00 17 So in other words, within the first two weeks of
01:14:03 18 training the good faith dispensing training would have to be
01:14:06 19 completed. But there may be other training that happens or
01:14:12 20 is required, but it wouldn't have to be done within that
01:14:15 21 first two weeks. That pharmacist might have, you know, a
01:14:17 22 month to do it or 60 days.

01:14:18 23 **Q** Do pharmacists always complete the training exactly
01:14:22 24 when they're supposed to?

01:14:23 25 **A** No.

01:14:23 1 **Q** Do you and your team and others at Walgreens take
01:14:26 2 steps to make sure, to the best of your ability, that they
01:14:30 3 complete that training promptly?

01:14:31 4 **A** Yes.

01:14:32 5 **Q** And I think I heard you say it, but does the training
01:14:38 6 that they pharmacist at Walgreens receives when they first
01:14:41 7 are on the job, does it include training on good faith
01:14:45 8 dispensing policies?

01:14:45 9 **A** It does.

01:14:52 10 **Q** In addition to the new hire training that we were just
01:14:54 11 talking about, does Walgreens also provide training when new
01:14:58 12 policies are rolled out?

01:15:00 13 **A** Yes.

01:15:01 14 **Q** Why do you do that?

01:15:02 15 **A** To make the pharmacy or whatever employee that it is
01:15:09 16 relevant to aware of the changes that have been put in
01:15:12 17 place.

01:15:13 18 **Q** Have you taken steps to roll out training when new
01:15:18 19 versions of the good faith dispensing policy rolled out?

01:15:21 20 **A** Yes.

01:15:21 21 **Q** Have you taken steps to roll out training for
01:15:27 22 pharmacists when new versions of the target drug good faith
01:15:30 23 dispensing policy roll out?

01:15:31 24 **A** Yes.

01:15:31 25 **Q** Does Walgreens also provide training for pharmacists

01:15:43 1 on an ad hoc basis if that pharmacist's performance isn't up
01:15:48 2 to par?

01:15:49 3 **A** Yes.

01:15:49 4 **Q** Are there other reasons that Walgreens might provide
01:15:51 5 ad hoc training to pharmacists on the job?

01:15:55 6 **A** Yes.

01:15:55 7 **Q** Now, you testified earlier that today Walgreens also
01:16:02 8 provides annual or periodic training on good faith
01:16:09 9 dispensing. Is that correct?

01:16:09 10 **A** Yes.

01:16:09 11 **Q** Have you been doing that at Walgreens for several
01:16:11 12 years?

01:16:12 13 **A** Yes.

01:16:12 14 **Q** Is that something that Walgreens agreed to do as part
01:16:18 15 of an agreement with the DEA?

01:16:22 16 **A** I believe it is in there, in the MOA, but we had
01:16:26 17 already made that decision that we were going to do the
01:16:29 18 annual training when I launched the target drug policy.

01:16:35 19 **Q** When the DEA reaches out and asks Walgreens to add
01:16:39 20 something to its training or to its policies and procedures,
01:16:44 21 do you personally take that seriously?

01:16:46 22 **A** Yes.

01:16:46 23 **Q** Do the people you work with take that seriously?

01:16:51 24 **A** Yes.

01:16:51 25 **Q** I want to ask you just a few questions about hiring of

01:16:54 1 new pharmacists at Walgreens or, you know, experienced
01:16:57 2 pharmacists, just hiring of pharmacists.

01:16:59 3 Does -- well, what does Walgreens do when it wants to
01:17:03 4 hire a new pharmacist? How does it find candidates?

01:17:06 5 **A** We recruit at pharmacy schools, we have a
01:17:15 6 Walgreens.com careers website where applicants can put forth
01:17:20 7 their application for hire. So mostly those two places.

01:17:27 8 **Q** Does Walgreens have cameras in every pharmacy?

01:17:30 9 **A** We do.

01:17:31 10 **Q** Do the pharmacists who work there know that?

01:17:33 11 **A** Yes.

01:17:33 12 **Q** Does Walgreens have inventory control systems that are
01:17:37 13 designed to identify missing inventory due to employee
01:17:40 14 theft?

01:17:41 15 **A** Yes.

01:17:42 16 **Q** Do the pharmacists know that?

01:17:45 17 **A** Yes.

01:17:47 18 **Q** Is it fair to say that to be a pharmacist at
01:17:51 19 Walgreens, you need to be comfortable with a fair amount of
01:17:53 20 corporate oversight?

01:17:54 21 MR. WEINBERGER: Objection.

01:18:01 22 THE COURT: Overruled.

01:18:02 23 **A** Yes.

01:18:02 24 **Q** What is the starting salary for a pharmacist at
01:18:04 25 Walgreens?

01:18:05 1 **A** On average, a hundred thousand.

01:18:10 2 **Q** If you're an experienced pharmacist, can you say as a

01:18:13 3 general matter what the average, is there like a top salary?

01:18:16 4 **A** Pharmacy managers will make more, and it will vary

01:18:21 5 based on cost of living in the market, where pharmacists in

01:18:27 6 Ohio might make less money than a pharmacist in

01:18:29 7 San Francisco.

01:18:30 8 **Q** All right. Now, I'm going to change to my next set of

01:18:33 9 questions. I'm going to ask you questions about Walgreens'

01:18:37 10 policies and procedures for dispensing of controlled

01:18:39 11 substances, okay?

01:18:41 12 **A** Okay.

01:18:41 13 **Q** I think you testified earlier, but I want to make sure

01:18:43 14 it's clear, are there two controlled substance dispensing

01:18:51 15 policies, roughly speaking, at Walgreens?

01:18:52 16 **A** Yes.

01:18:52 17 **Q** What are those two policies?

01:18:53 18 **A** There's an overarching good faith dispensing policy

01:18:57 19 that is intended for all controlled substances, no matter

01:19:00 20 what. And then there's the target drug good faith

01:19:04 21 dispensing policy, which is for select drugs.

01:19:07 22 **Q** All right. I'm going to start with the good faith

01:19:09 23 dispensing policy which you referred to as the overarching

01:19:12 24 dispensing policy. But before I asked you about the policy

01:19:18 25 itself, I want to go back to some of the questions the

01:19:20 1 plaintiffs' lawyer asked you today about an e-mail exchange
01:19:24 2 between you and your team about what you were doing to put
01:19:28 3 in place addition policies, programs, because the DEA had
01:19:35 4 asked you to do that in relation to a store in San Diego.

01:19:38 5 Do you remember those questions?

01:19:39 6 **A** Yes.

01:19:39 7 **Q** The plaintiffs' lawyer showed you an e-mail, and I'll
01:19:46 8 ask you to see if you can find it in your stack, it's
01:19:49 9 Plaintiffs' Exhibit 19566.

01:20:11 10 **A** Yes.

01:20:21 11 **Q** Is that what I've got up on the screen here as well?

01:20:24 12 **A** Yes.

01:20:33 13 **Q** I'm going to scroll down to the e-mail on the bottom
01:20:36 14 half of the first page from you to Cheryl, Tomson, and Al.

01:20:41 15 Do you remember questions about this e-mail earlier
01:20:43 16 today?

01:20:43 17 **A** Yes.

01:20:43 18 **Q** Your e-mail says, "The document attached is what the
01:20:55 19 DEA wants us to agree to. When you open the attachment, it
01:20:58 20 has various sections lettered A through M."

01:21:03 21 Do you see that?

01:21:03 22 **A** Yes.

01:21:03 23 **Q** And it says, "Debbie has added a few things in blue.
01:21:08 24 Below is what we need to accomplish. I will only put the
01:21:11 25 sections we need to work on."

01:21:13 1 Do you see that?

01:21:14 2 **A** Yes.

01:21:14 3 **Q** And then below your -- that first paragraph you have a
01:21:22 4 number of sections that start with section C.

01:21:27 5 Do you see that?

01:21:27 6 **A** Yes.

01:21:27 7 **Q** It goes C, then there's section D, E. If we carry
01:21:33 8 over to the next page, you can see you continued with
01:21:38 9 sections F, G, J, and M.

01:21:41 10 Do you see that?

01:21:41 11 **A** Yes.

01:21:41 12 **Q** Are those the sections you were telling your team
01:21:45 13 needed to be worked on?

01:21:46 14 **A** Yes.

01:21:46 15 **Q** You did not mention in your e-mail sections A or B,
01:21:51 16 correct?

01:21:51 17 **A** Correct.

01:21:52 18 **Q** All right. Then if we carry over to I think it's page
01:21:56 19 5 is the memo from Debbie Platts to you.

01:22:02 20 Do you see that?

01:22:04 21 **A** Yes.

01:22:04 22 **Q** And you can see if you look down through it she's got
01:22:08 23 sections A through M?

01:22:09 24 **A** Yes.

01:22:10 25 **Q** All right. Let's look at sections A and B. These are

01:22:13 1 the ones that you did not include as sections that needed to
01:22:17 2 be worked on.

01:22:21 3 Start with A. It says, "Walgreens agrees to maintain
01:22:25 4 a compliance program to detect and avoid violations of the
01:22:28 5 Controlled Substances Act and applicable DEA regulations."

01:22:31 6 Do you see that?

01:22:32 7 **A** I do.

01:22:32 8 **Q** Did Walgreens already have a compliance program to
01:22:35 9 detect and avoid violations of the CSA and applicable DEA
01:22:40 10 regulations in June of 2010, the date of this memo?

01:22:43 11 **A** Yes.

01:22:44 12 **Q** Okay. And just to be clear, I mean, you agreed to
01:22:47 13 continue to do that, right?

01:22:48 14 **A** Yes.

01:22:49 15 **Q** All right. Then section B says, "This program shall
01:22:54 16 include procedures to identify the common signs associated
01:22:58 17 with the diversion of controlled substances, including, but
01:23:03 18 not limited to, doctor shopping and requests for early
01:23:06 19 refills."

01:23:07 20 Do you see that?

01:23:07 21 **A** Yes.

01:23:07 22 **Q** And then Debbie says, "I could not find anything in
01:23:12 23 our procedures that addressed this request." And she has a
01:23:15 24 suggestion here about a pharmacy code of conduct.

01:23:18 25 Do you see that?

01:23:19 1 **A** Yes.

01:23:19 2 **Q** Did Walgreens already have a good faith dispensing
01:23:23 3 policy in place that identified common signs associated with
01:23:27 4 the diversion of controlled substances in 2010?

01:23:30 5 **A** Yes.

01:23:30 6 **Q** Common signs associated with diversion, is that just
01:23:34 7 another way of saying red flags?

01:23:38 8 **A** Yes.

01:23:38 9 **Q** All right. Now I'd like to ask you some questions
01:23:40 10 about the good faith dispensing policy at Walgreens itself.
01:23:44 11 What is the good faith dispensing policy?

01:23:49 12 **A** The good faith dispensing policy is a policy that
01:23:53 13 explains to our pharmacists our expectations with their
01:23:57 14 corresponding responsibility when filling controlled
01:24:00 15 substance prescriptions.

01:24:01 16 **Q** Does the good faith dispensing policy identify red
01:24:04 17 flags that pharmacists are supposed to be aware of?

01:24:06 18 **A** Yes.

01:24:06 19 **Q** How long has Walgreens had a good faith dispensing
01:24:10 20 policy?

01:24:10 21 **A** I remember talking about a good faith dispensing
01:24:16 22 policy when I became a pharmacist, but I know I've seen
01:24:19 23 written good faith dispensing policies since 1989.

01:24:23 24 **Q** I'm going to put one on the screen.

01:24:28 25 Well, I'll ask you do you recognize the document that

01:24:30 1 I'm just put on the screen?

01:24:31 2 **A** Yes.

01:24:31 3 **Q** What is it?

01:24:32 4 **A** It's our good faith dispensing policy from 1998.

01:24:36 5 **Q** I think I just heard you say you recall written good
01:24:41 6 faith dispensing policies that go back even further than
01:24:43 7 this; is that right?

01:24:44 8 **A** No, I think I misspoke the year. I graduated in '89.
01:24:48 9 But I remember having a policy. I don't remember what it
01:24:50 10 looked like or anything like that. But I do recognize this
01:24:54 11 one from 1998.

01:24:57 12 **Q** Now, I'm going to focus on the bullet list under
01:25:03 13 Elements at the top half of the page.

01:25:05 14 Do you see that?

01:25:06 15 **A** I do.

01:25:06 16 **Q** Well, first of all, just to walk through it because I
01:25:09 17 don't know that we've spent much time on the good faith
01:25:12 18 dispensing, actually what it says.

01:25:13 19 The first paragraph says, "The pharmacist must use the
01:25:18 20 elements of good faith dispensing in conjunction with state
01:25:21 21 and federal controlled substances" probably meant to say
01:25:27 22 controlled substances laws there.

01:25:27 23 Do you agree with that?

01:25:28 24 **A** Yes.

01:25:29 25 **Q** "When filling all prescriptions, the pharmacist must

01:25:32 1 determine if a prescription for a controlled substance is
01:25:35 2 dispensed for a legitimate medical purpose."

01:25:39 3 Do you see that there?

01:25:40 4 **A** Yes.

01:25:40 5 **Q** All right. I want to focus your attention, I have a
01:25:43 6 number of questions about this bullet list under Elements.

01:25:46 7 It says, "The elements of good faith dispensing that
01:25:50 8 should alert a pharmacist to questionable circumstances
01:25:53 9 are:"

01:25:56 10 And then there's a bullet list of depending on how you
01:25:59 11 count it, either seven or 10 items there.

01:26:02 12 Do you see that?

01:26:03 13 **A** Yes.

01:26:06 14 **Q** As a pharmacist, do you recognize the questionable
01:26:10 15 circumstances that are listed here as red flags?

01:26:16 16 **A** Yes.

01:26:16 17 **Q** I'd like to walk you through each of these.

01:26:19 18 The first one on the list -- see if I can make this
01:26:22 19 bigger.

01:26:25 20 The first red flag on the list, it says, "Numerous
01:26:33 21 controlled substance prescriptions written by the same
01:26:36 22 prescriber or numerous prescribers."

01:26:38 23 Do you see that?

01:26:39 24 **A** Yes.

01:26:39 25 **Q** So I want to ask you a question about this bullet

01:26:43 1 point.

01:26:43 2 If a patient presents an opioid prescription or
01:26:48 3 multiple opioid prescriptions with overlapping days of
01:26:52 4 supply that were written by two or more doctors, would that
01:26:56 5 be captured by this item in the 1998 good faith dispensing
01:27:00 6 policy?

01:27:00 7 **A** Yes.

01:27:01 8 **Q** Would that be a concern for the pharmacist?

01:27:06 9 **A** It would be something that the pharmacist should be
01:27:10 10 taking into consideration when doing their evaluation.

01:27:13 11 **Q** Is the circumstance that I just described, a patient
01:27:18 12 presents opioid prescriptions written by multiple doctors,
01:27:23 13 is that something that you would refer to as doctor shopping
01:27:25 14 today?

01:27:27 15 **A** You'd have to understand the circumstances around it,
01:27:31 16 but it could be.

01:27:33 17 **Q** Was doctor shopping a term that was used by
01:27:36 18 pharmacists in 1998, if you know?

01:27:38 19 **A** Yes.

01:27:38 20 **Q** Are there circumstances where a patient presenting
01:27:43 21 opioid prescriptions from more than one prescriber would not
01:27:47 22 be a concern?

01:27:48 23 **A** Yes.

01:27:51 24 **Q** Why would a patient ever go to two different doctors
01:27:56 25 for the same medication?

01:27:57 1 **A** It could be that their prescriber is in a medical
01:28:04 2 practice that has multiple doctors, and maybe their doctor
01:28:08 3 was on vacation or they didn't see that doctor at the time,
01:28:12 4 or they went to the hospital for something else. There
01:28:15 5 could be a lot of reasons and would be something that the
01:28:21 6 pharmacists would want to evaluate and take into
01:28:24 7 consideration.

01:28:24 8 **Q** Based on that pharmacist's knowledge of the patient
01:28:29 9 and the prescriber, is it possible that a prescription that
01:28:33 10 fit this description wouldn't be a red flag to that
01:28:36 11 pharmacist at all?

01:28:37 12 **A** It's possible.

01:28:41 13 **Q** Still focused on that first bullet in the 1998 good
01:28:44 14 faith dispensing policy, if a patient presents prescriptions
01:28:48 15 for two short-acting opioids on the same day, would that be
01:28:52 16 captured by this red flag?

01:28:55 17 **A** Yes.

01:28:56 18 **Q** Would that be a concern that you would want a
01:28:58 19 pharmacist to look out for?

01:28:59 20 **A** Yes.

01:28:59 21 **Q** Would you agree with me, Ms. Polster, that there are a
01:29:06 22 number of ways for a pharmacist to resolve a red flag?

01:29:08 23 **A** Yes.

01:29:08 24 **Q** All right. Now I want to ask you about the second
01:29:12 25 bullet in the 1998 good faith dispensing policy. It says,

01:29:17 1 "Numerous prescriptions submitted by the same person."
01:29:22 2 Could that include numerous prescriptions for an
01:29:26 3 unusual combination of medications, like an opioid and a
01:29:30 4 benzodiazapine?

01:29:30 5 **A** It could.

01:29:31 6 **Q** The jury has heard about cocktail or trinity
01:29:36 7 prescriptions in this case.

01:29:39 8 What is a cocktail prescription?

01:29:41 9 **A** The DEA refers to the cocktail as an opioid,
01:29:47 10 benzodiazapine, and a muscle relaxant prescribed at the same
01:29:52 11 time or for the patient to take at the same time.

01:29:53 12 **Q** Is that something that you want your pharmacists at
01:29:57 13 Walgreens to look out for?

01:29:58 14 **A** Yes.

01:30:00 15 **Q** Has Walgreens trained its pharmacists to watch out for
01:30:04 16 cocktail or other unusual combinations of medications for as
01:30:09 17 long as you can remember?

01:30:10 18 **A** Yes.

01:30:12 19 **Q** But I think I heard you testify earlier today that
01:30:14 20 there are circumstances where you have seen personally that
01:30:20 21 it would be appropriate to fill a prescription for an
01:30:23 22 unusual combination like that; is that a fair
01:30:25 23 characterization?

01:30:26 24 **A** Yes.

01:30:26 25 **Q** When you're looking at a combination -- unusual

01:30:32 1 combination prescription, something like a cocktail or an
01:30:35 2 opioid and a benzodiazapine, does it make a difference to
01:30:38 3 you if the prescriptions are all presented at the same time?

01:30:43 4 **A** Well, that would -- well, I guess it would depend if
01:30:50 5 they were all presented at the same time written by the same
01:30:54 6 doctor or if they were different doctors.

01:30:55 7 **Q** What's the difference in your mind?

01:30:57 8 **A** Well, if it's the same doctor, then you're aware that
01:31:03 9 that doctor knows that that patient is taking those
01:31:07 10 medications, and they prescribed them.

01:31:12 11 **Q** So let me stop you right there.

01:31:13 12 Are you saying that there could be a situation where
01:31:15 13 it would give you more comfort if those prescriptions, those
01:31:20 14 combination prescriptions, were written by the same doctor?

01:31:22 15 **A** Well, different steps would have to be taken in that
01:31:29 16 instance.

01:31:31 17 **Q** What were you meaning to explain when you said it
01:31:34 18 would depend if they were written by the same doctor or not?

01:31:37 19 **A** So if they're written by the same doctor, then you
01:31:40 20 would know as a pharmacist that that doctor prescribed them.
01:31:42 21 If they were written by different prescribers, the
01:31:49 22 pharmacist may want to do due diligence to contact each of
01:31:53 23 the other prescribers to make sure that they were aware that
01:31:55 24 the other doctors prescribed controlled substances for that
01:31:59 25 same patient.

01:32:00 1 **Q** Are there circumstances where the fact that one doctor
01:32:05 2 wrote prescriptions for an opioid, a benzodiazapine, and a
01:32:09 3 muscle relaxer increased your suspicion?

01:32:13 4 **A** I guess it would depend on the dose. You'd have to
01:32:18 5 understand the doctor's prescribing patterns as well as what
01:32:24 6 was going on with the patient at the time.

01:32:25 7 **Q** Okay. The next item in the 1998 good faith dispensing
01:32:28 8 policy has three subparts, and I'll try to take them one by
01:32:32 9 one.

01:32:33 10 The first is "Increased frequency of prescriptions for
01:32:37 11 the same controlled drug: By one prescriber."

01:32:42 12 Why is that a potential concern?

01:32:44 13 **A** Well, you know, if the patient continues to bring in a
01:32:54 14 controlled substance prescription from the same prescriber
01:32:57 15 more often than what the prescription should last, that
01:33:01 16 would be something that the pharmacist would want to
01:33:04 17 evaluate before moving forward and filling the prescription.

01:33:07 18 **Q** All right. The next one says, "Increased frequency of
01:33:11 19 prescriptions for the same controlled drug: For large
01:33:16 20 numbers of patients."

01:33:17 21 I have a pretty specific question for you about this
01:33:20 22 one. I'll give you an example.

01:33:21 23 If four or more patients presented prescriptions for
01:33:26 24 the same drug, the same dose, written by the same
01:33:31 25 prescriber, all on the same day, would that be the kind of

01:33:34 1 scenario that would be captured by this red flag in
01:33:38 2 Walgreens' 1998 policy?

01:33:40 3 **A** Yes.

01:33:40 4 **Q** Would that scenario that I just described always be a
01:33:45 5 red flag, for example, if you have four people on the same
01:33:49 6 day but one of them comes in at 8:00 in the morning, one
01:33:52 7 comes at noon, one comes at 2:00 in the afternoon, one comes
01:33:56 8 at 5:00 p.m., would it be the same kind of a scenario?

01:33:59 9 **A** It would be a different scenario.

01:34:04 10 **Q** Is it possible that prescriptions along the types of
01:34:09 11 examples that I just described wouldn't present a red flag
01:34:11 12 at all to a pharmacist depending on the knowledge of the
01:34:14 13 patient, the prescriber, the prescriptions?

01:34:17 14 **A** Yes, it's possible.

01:34:18 15 **Q** All right. The next item on the list in this 1998
01:34:28 16 policy is, "Increased frequency of prescriptions for the
01:34:31 17 same controlled drug: For quantities beyond those normally
01:34:35 18 prescribed."

01:34:35 19 Why is that a concern that Walgreens wanted its
01:34:38 20 pharmacists to look out for?

01:34:41 21 **A** Well, you'd want to make sure that when dispensing
01:34:43 22 your controlled substances, if you have a prescriber that
01:34:45 23 you know to only prescribe 10 tablets at a time and all of a
01:34:50 24 sudden a prescription comes in for a hundred, you as the
01:34:55 25 pharmacist would take pause and look to make sure that the

01:34:59 1 doctor did really intend to write it for 100 or what was
01:35:03 2 happening that would change that prescriber's prescribing
01:35:11 3 habit.

01:35:11 4 **Q** The next item on the list in the 1998 policy is,
01:35:16 5 "Unusual dosages or instructions in conflict with approved
01:35:19 6 labeling."

01:35:20 7 What does that mean?

01:35:25 8 **A** Medications are given recommended prescribing to the
01:35:31 9 prescriber and also that pharmacists use as references. And
01:35:37 10 if a dose came in that was out of the ordinary, for example,
01:35:40 11 you have a patient who's never taken an opioid before and
01:35:44 12 they come in with a high dosage or a high MME, that would be
01:35:51 13 something the pharmacist would want to stop and make sure
01:35:53 14 that it's safe to dispense.

01:35:55 15 **Q** Are there circumstances where a patient, a new patient
01:35:59 16 coming in with a high dose prescription could be explained
01:36:03 17 right off the bat by the pharmacist looking at the patient
01:36:05 18 and it wouldn't be a red flag?

01:36:06 19 **A** The pharmacist would need to do their due diligence,
01:36:12 20 but what would tell them if they're a new patient to
01:36:15 21 Walgreens is looking at the state PDMP.

01:36:19 22 **Q** Okay. All right. The next one on the list is
01:36:23 23 "Unusual geographical distances between patient, pharmacist,
01:36:27 24 and prescriber."

01:36:28 25 Do you see that one?

01:36:30 1 **A** Yes.

01:36:30 2 **Q** This is one that I think the jury has heard a fair
01:36:32 3 amount about. The 1998 good faith dispensing doesn't
01:36:38 4 provide a specific distance that Walgreens has decided is
01:36:43 5 unusual across the board; is that a fair statement?

01:36:46 6 **A** Yes.

01:36:46 7 **Q** Why is that?

01:36:47 8 **A** Well, there could be reasons why a patient would need
01:36:51 9 to travel to a specialist that maybe, you know, they live in
01:36:57 10 a rural town and they need to see a specialist, and it would
01:37:01 11 be further than a certain mileage number. I mean, there are
01:37:05 12 some patients that travel across state lines to seek
01:37:08 13 treatment at specialty-type medical centers.

01:37:15 14 **Q** Are there other reasons why a patient might need to
01:37:18 15 travel more than a particular distance to see the pharmacy
01:37:22 16 or the doctor?

01:37:23 17 **A** Yes.

01:37:26 18 **Q** Can a pharmacist use a bright-line rule of, say, 25
01:37:30 19 miles and call that an unusual distance?

01:37:32 20 **A** They could, but they would need to resolve it. So
01:37:37 21 you'd have to take the entire situation into consideration,
01:37:45 22 but it would be -- it needs to be explained as to why the
01:37:47 23 patient is going a long distance.

01:37:49 24 **Q** Are there circumstances, depending on the community,
01:37:52 25 the location of the pharmacy, the size of the city or town,

01:37:57 1 where 25 miles wouldn't be unusual at all?

01:38:00 2 **A** Yes.

01:38:03 3 **Q** Has Walgreens ever included a bright-line distance in
01:38:11 4 its dispensing policies that it has determined are unusual?

01:38:14 5 **A** No.

01:38:14 6 **Q** Do you agree, Ms. Polster, that as a pharmacist you
01:38:20 7 tend to get to know your patients and the prescribers in the
01:38:23 8 area?

01:38:23 9 **A** Yes.

01:38:23 10 **Q** All right. The next item on the list in the 1998 good
01:38:29 11 faith dispensing policy is, "Consistent prescription of
01:38:34 12 habit forming drugs."

01:38:36 13 The question I have for you about this one is, if a
01:38:39 14 patient is taking an opioid for a lengthy period of time,
01:38:43 15 would that be something that could fall under this red flag
01:38:47 16 in the 1998 policy?

01:38:49 17 **A** Yes.

01:38:49 18 **Q** Is that something that Walgreens wants its pharmacists
01:38:53 19 to look out for?

01:38:54 20 **A** Yes.

01:38:54 21 **Q** Okay. Below the bullet list on the first page of the
01:39:04 22 1998 good faith dispensing policy it says -- let me call
01:39:12 23 this out for you -- "If a pharmacist becomes aware of
01:39:20 24 circumstances including one or more elements of good faith
01:39:23 25 dispensing, the pharmacist should: Not dispense the drug."

01:39:29 1 Do you see that?

01:39:30 2 **A** Yes.

01:39:30 3 **Q** Is that something that has been policy at Walgreens as
01:39:36 4 long as you can remember for pharmacists?

01:39:38 5 **A** Yes.

01:39:38 6 **Q** And the second-to-last paragraph on this page says,
01:39:50 7 "The pharmacist must exercise professional judgment
01:39:53 8 regarding the patient's continued need for controlled
01:39:57 9 substances."

01:39:57 10 Do you agree with that statement?

01:39:59 11 **A** Yes.

01:39:59 12 **Q** It says, "The pharmacist must contact the prescriber
01:40:03 13 when all elements of good faith dispensing cannot be met."

01:40:08 14 Does that mean that if there are red flags on a
01:40:12 15 prescription that can't be resolved, you're supposed to call
01:40:16 16 the doctor?

01:40:16 17 **A** Yes.

01:40:16 18 **Q** Is calling the doctor the only thing that a pharmacist
01:40:23 19 is supposed to do if they can't resolve red flags?

01:40:25 20 **A** No.

01:40:25 21 **Q** If a doctor says either today or to a pharmacist in
01:40:29 22 1998 when they -- when the pharmacist picks up the phone
01:40:32 23 about a prescription, if the doctor says, just fill it, is
01:40:36 24 that what the pharmacist is supposed to do?

01:40:37 25 **A** No.

01:40:37 1 **Q** If the red flag that the pharmacist is concerned about
01:40:42 2 is something suspicious about the doctor, is the pharmacist
01:40:46 3 supposed to just take the doctor's word that it's a good
01:40:50 4 prescription?

01:40:51 5 **A** No.

01:40:51 6 **Q** What is the pharmacist supposed to do in that
01:40:52 7 circumstance?

01:40:53 8 **A** Well, after they exercise their due diligence, then
01:40:58 9 they should not dispense the prescription if they feel that
01:41:03 10 they haven't met their corresponding responsibility to
01:41:06 11 ensure the prescription was written in good faith.

01:41:09 12 **Q** I'm going to show you -- well, I'll ask you to look at
01:41:12 13 Tab 2 in your binder, the one that I gave you.

01:41:18 14 **A** Okay.

01:41:18 15 **Q** Do you recognize the document behind Tab 2?

01:41:21 16 **A** I do.

01:41:22 17 **Q** What is it?

01:41:22 18 **A** It is another good faith dispensing policy from --
01:41:29 19 well, let's see, it was revised in 2005 and revised again in
01:41:32 20 2006.

01:41:34 21 **Q** Let's just get the date on this one.

01:41:39 22 Are you looking at the dates at the bottom of the
01:41:41 23 second page?

01:41:42 24 **A** Yes.

01:41:42 25 **Q** So you can see that the latest revision is from June

01:41:45 1 of 2006?

01:41:45 2 **A** Yes.

01:41:46 3 **Q** All right. I'm going to go back to the first page.

01:41:51 4 THE COURT: Just to be clear, this is 00071?

01:41:54 5 MS. SWIFT: Yes, Your Honor. My apologies.

01:41:56 6 THE COURT: Okay. I just want to make sure

01:41:57 7 the record's clear.

01:41:58 8 MS. SWIFT: Thank you.

01:42:00 9 **Q** You can see at the top of the page -- I'll call it

01:42:05 10 out -- it says again Elements.

01:42:08 11 And is that the same list of red flags we were looking

01:42:10 12 at before?

01:42:10 13 **A** Yes.

01:42:11 14 **Q** Then on the bottom of the page do you see, I think --

01:42:17 15 it's depending how you count, it's the fifth bullet. I'll

01:42:22 16 try to call it out for you.

01:42:28 17 It says, "If the prescriber informs the pharmacist

01:42:32 18 that a prescription for a controlled substance is not valid

01:42:34 19 or authorized, contact law enforcement."

01:42:41 20 Do you know from your personal experience that

01:42:44 21 pharmacists do contact law enforcement when they identify

01:42:49 22 fraudulent prescriptions?

01:42:52 23 MR. WEINBERGER: Objection.

01:42:59 24 MS. SWIFT: I can withdraw the question.

01:43:00 25 THE COURT: I'm going to sustain that the way

01:43:04 1 it's said.

01:43:05 2 MS. SWIFT: I'll ask it a different way.

01:43:05 3 **Q** Do you know why this provision is in the 2006 good
01:43:08 4 faith dispensing policy?

01:43:10 5 **A** Yes, because if the pharmacist identified a fraudulent
01:43:14 6 prescription, it's against the law, and we asked our
01:43:19 7 pharmacists to contact local law enforcement to let them
01:43:21 8 know that this patient was trying to pass a fraudulent
01:43:24 9 prescription.

01:43:24 10 **Q** Do you know whether pharmacists at Walgreens do that
01:43:27 11 every single time they refuse a prescription?

01:43:31 12 MR. WEINBERGER: Objection.

01:43:33 13 MS. SWIFT: Just asking if she knows.

01:43:35 14 THE COURT: Overruled.

01:43:36 15 **A** No, I don't.

01:43:38 16 THE COURT: Are you asking today? I mean,
01:43:40 17 over 20 years what --

01:43:42 18 MR. WEINBERGER: There's no foundation, Your
01:43:44 19 Honor.

01:43:44 20 MS. SWIFT: I was asking her ...

01:43:46 21 **Q** Do you know whether pharmacists at Walgreens contact
01:43:49 22 law enforcement every single time they refuse a
01:43:53 23 prescription?

01:43:53 24 **A** No, I don't.

01:43:56 25 MR. WEINBERGER: Objection.

01:43:56 1 THE COURT: I'm going to -- let's go on the
01:43:58 2 headphones.

01:44:03 3 (At side bar at 1:44 p.m.)

01:44:11 4 THE COURT: All right. Ms. Swift, in
01:44:12 5 reviewing the question I'm going to sustain the objection
01:44:14 6 because it presumes that Walgreens pharmacists do refuse to
01:44:21 7 fill prescriptions. And we just had a study that was -- she
01:44:25 8 talked about where when they did a survey in a thousand of
01:44:29 9 the stores the pharmacists had not filled -- not refused a
01:44:31 10 single prescription in a year.

01:44:34 11 So I'm going to sustain the objection the way you've
01:44:37 12 asked it.

01:44:37 13 MS. SWIFT: I'll move on. I'll come back to
01:44:40 14 the survey you were just talking about, but I'll ask the
01:44:42 15 question a different way.

01:44:43 16 THE COURT: Okay. Thank you.

01:44:48 17 (In open court at 1:44 p.m.)

01:44:57 18 BY MS. SWIFT:

01:44:58 19 Q Ms. Polster, has it always been Walgreens' policy to
01:45:02 20 instruct pharmacists to call law enforcement when they
01:45:04 21 identify a fraudulent prescription?

01:45:05 22 MR. WEINBERGER: Objection.

01:45:09 23 THE COURT: I think you need to put a time
01:45:12 24 frame on that, Ms. Swift.

01:45:13 25 Q All right. We're looking at a 2006 Walgreens

01:45:17 1 dispensing policy, right?

01:45:18 2 **A** Yes.

01:45:18 3 **Q** In 2006, was Walgreens empowering pharmacists to
01:45:24 4 contact law enforcement when they deemed it appropriate?

01:45:28 5 MR. WEINBERGER: Objection.

01:45:33 6 THE COURT: The way you're asking it, I'm
01:45:34 7 going to sustain the objection.

01:45:37 8 **Q** The policy goes on to say, "If the prescriber can't be
01:45:45 9 reached, do not dispense."

01:45:48 10 Do you see that at the bottom of the page?

01:45:49 11 **A** Yes.

01:45:49 12 **Q** We've seen that before in the earlier policy as well,
01:45:53 13 correct?

01:45:53 14 **A** Yes.

01:45:57 15 **Q** All right. Now I'd like you to turn to Tab 3 in your
01:46:00 16 binder. And this is Exhibit 211.

01:46:06 17 **A** Yes.

01:46:06 18 **Q** Do you recognize Exhibit 211?

01:46:09 19 **A** Yes.

01:46:09 20 **Q** What is it?

01:46:10 21 **A** It is another policy. My 211 doesn't match what's on
01:46:18 22 the screen though.

01:46:19 23 **Q** No, it doesn't, that's true. Hold on a second.

01:46:23 24 Does it match now?

01:46:24 25 **A** Yes.

01:46:24 1 **Q** What is that document?

01:46:25 2 **A** So this is another revised revision to the good faith

01:46:33 3 dispensing policy from June of 2011.

01:46:37 4 **Q** All right. And we see again under the word Elements

01:46:42 5 there is a list of bullets like we've seen before.

01:46:45 6 Would you agree with me, Ms. Polster, that this list

01:46:47 7 is longer than what we've seen before?

01:46:50 8 **A** Yes.

01:46:52 9 **Q** Do you know why the list of red flags in the good

01:46:57 10 faith dispensing policy got longer in 2011?

01:46:59 11 **A** Yes.

01:46:59 12 **Q** Why?

01:47:00 13 **A** We were starting to see changes that were happening in

01:47:04 14 the industry. We were starting to see just new things that

01:47:12 15 were happening that we wanted to include in the policy to

01:47:16 16 ensure that our pharmacists were aware.

01:47:18 17 **Q** I think you may have touched on this a little bit

01:47:22 18 yesterday in your testimony. You said you'd seen new things

01:47:27 19 start to change in the industry around 2011. I believe you

01:47:32 20 said something to that effect in response to questions about

01:47:35 21 when the opioid crisis began.

01:47:37 22 Do you remember that?

01:47:37 23 **A** I do.

01:47:38 24 **Q** Were the changes in the industry that you just

01:47:44 25 referenced a moment ago what you were referring to in your

01:47:47 1 answers yesterday?

01:47:48 2 **A** Yeah, that's some of them, yes.

01:47:51 3 **Q** And I'd like to know a little bit more what you mean
01:47:53 4 when you say "changes in the industry."

01:47:56 5 What specifically are you talking about?

01:47:57 6 **A** So when more chronic pain medications were coming into
01:48:03 7 a retail setting versus the acute or the hospice end of life
01:48:11 8 prescriptions, we were seeing chronic pain patients come
01:48:15 9 into a retail setting --

01:48:17 10 **Q** Can I stop you right there and ask a follow-up
01:48:19 11 question?

01:48:19 12 Do you have an understanding based on your experience
01:48:21 13 at Walgreens why you were seeing more chronic pain patients
01:48:26 14 in roughly this time frame?

01:48:27 15 **A** I do.

01:48:27 16 **Q** What is that understanding?

01:48:29 17 **A** During that time frame, the regulations changed where
01:48:34 18 a prescriber who worked at a pain clinic could not dispense
01:48:40 19 pain medications for the patients that they were prescribing
01:48:43 20 for.

01:48:44 21 **Q** You said the regulations.

01:48:45 22 Are you talking about specific state laws?

01:48:48 23 **A** I don't know if it was state or federal.

01:48:54 24 **Q** Are you talking about a particular location of the
01:48:56 25 country?

01:48:57 1 **A** It was my understanding it was nationwide because we
01:49:02 2 started to see chronic pain patients nationally.

01:49:06 3 **Q** And I think you said a moment ago it was because pain
01:49:12 4 clinics or pain management clinics were no longer allowed to
01:49:15 5 dispense directly to patients.

01:49:17 6 Do I have that right?

01:49:18 7 MR. WEINBERGER: Objection.

01:49:21 8 MS. SWIFT: I don't mean to mischaracterize.
01:49:23 9 I was just trying to get her back to what she just said.

01:49:26 10 THE COURT: Overruled. You can ask what she's
01:49:28 11 saying.

01:49:28 12 **Q** Is that what you said?

01:49:30 13 **A** Yes.

01:49:30 14 **Q** Why did that have an effect on the patients that
01:49:34 15 Walgreens was seeing?

01:49:35 16 **A** Because we started to see patients that would come in
01:49:40 17 that would get larger quantities than, you know, what would
01:49:43 18 be needed for a broken leg or recovering from a surgery. We
01:49:48 19 started seeing patients that would have to come in that
01:49:51 20 would have to be -- their pain would need to be managed
01:49:55 21 because they weren't a surgical candidate or they didn't
01:50:00 22 have the benefit of being able to, you know, get better from
01:50:06 23 their pain quickly.

01:50:07 24 **Q** Is what you're saying that the patients who used to go
01:50:09 25 to pain clinics were then coming to retail pharmacies like

01:50:14 1 Walgreens?

01:50:14 2 **A** Yes.

01:50:15 3 **Q** Were all of those patients bad patients?

01:50:21 4 **A** No.

01:50:21 5 **Q** Were all of the prescriptions they presented
01:50:28 6 illegitimate?

01:50:29 7 MR. WEINBERGER: Objection. She wasn't a
01:50:30 8 pharmacist at the time.

01:50:35 9 THE COURT: I'm going to sustain the
01:50:36 10 objection.

01:50:37 11 **Q** Do you have an understanding from your experience at
01:50:39 12 Walgreens as to whether the increase in prescriptions and
01:50:43 13 patients who came in this time frame to Walgreens, whether
01:50:47 14 those were all illegitimate prescriptions or not?

01:50:51 15 MR. WEINBERGER: Objection.

01:50:51 16 THE COURT: Sustained.

01:50:55 17 **Q** Do you have and understanding that Walgreens saw an
01:50:57 18 increase in the number of prescriptions that came into the
01:50:59 19 stores during this time?

01:51:01 20 MR. WEINBERGER: Objection.

01:51:02 21 THE COURT: I'll allow that. Overruled.

01:51:04 22 **A** Yes, we did see an increase in prescriptions for
01:51:06 23 chronic pain patients during that time.

01:51:08 24 **Q** Was the change that you saw in this time frame unlike
01:51:12 25 changes in prescription trends that you had seen previously

01:51:16 1 in your various jobs at Walgreens, including as a pharmacist
01:51:20 2 and a manager?

01:51:21 3 MR. WEINBERGER: Objection, Your Honor.

01:51:23 4 THE COURT: Sustained.

01:51:29 5 **Q** Ms. Polster, when you said that you believed the
01:51:32 6 opiate crisis began around this time frame, were you
01:51:36 7 referring to this change in the types of patients and the
01:51:39 8 numbers of prescriptions that you saw in that time frame?

01:51:41 9 MR. WEINBERGER: Objection.

01:51:42 10 THE COURT: Well, I'll let her explain her
01:51:45 11 answer.

01:51:46 12 You can answer that.

01:51:51 13 **A** Yes.

01:51:51 14 **Q** Did you mean to minimize or brush aside in any way
01:51:53 15 problems with prescription opioid abuse that had been in the
01:51:59 16 country prior to that time frame?

01:52:00 17 MR. WEINBERGER: Objection.

01:52:00 18 THE COURT: Sustained.

01:52:03 19 **Q** Does Walgreens have any influence over prescribing
01:52:07 20 practices?

01:52:08 21 **A** No.

01:52:08 22 **Q** Are pharmacists in a better position than prescribers,
01:52:13 23 in your view, to evaluate legitimate medical need?

01:52:19 24 MR. WEINBERGER: Objection.

01:52:21 25 MS. SWIFT: I'll withdraw it.

01:52:22 1 **Q** Ms. Polster, do pharmacists examine patients?

01:52:25 2 **A** No.

01:52:25 3 **Q** Do pharmacists have access to a patient's full medical

01:52:30 4 history?

01:52:31 5 **A** No.

01:52:31 6 **Q** Can a pharmacist order tests like blood work, X-rays,

01:52:37 7 and MRIs?

01:52:38 8 **A** No.

01:52:38 9 **Q** All right. Turning back to the 2011 good faith

01:52:44 10 dispensing policy that we've got on the screen.

01:52:45 11 One of the new red flags that was added to this policy

01:52:50 12 is "Consistent requests for early refills."

01:52:55 13 Do you see that?

01:52:55 14 **A** Yes.

01:52:55 15 **Q** What counts as "early"?

01:53:05 16 **A** There's not a cut and dry answer. It depends on the

01:53:08 17 circumstance and the patient and what's happening.

01:53:10 18 **Q** Why had it be a concern in certain circumstances if a

01:53:17 19 patient is presenting a prescription too early?

01:53:19 20 **A** If it's the same patient that comes in each time they

01:53:23 21 need to get their pain medication again and they say, well,

01:53:28 22 I ran out, I dropped it, it fell in the toilet, there's a

01:53:35 23 myriad of reasons why a patient would -- you would need to

01:53:38 24 understand and be able to resolve the reasons why before you

01:53:42 25 should dispense it.

01:53:45 1 **Q** If you're a staff pharmacist who has a patient like
01:53:47 2 what you just described who consistently tries to fill
01:53:50 3 prescriptions early and is consistently told you can't do
01:53:53 4 that, is it appropriate as a pharmacist to beg off and ask
01:53:58 5 one of the other staff pharmacists to fill for that patient?

01:54:01 6 **A** No.

01:54:01 7 **Q** Why not?

01:54:02 8 **A** You can't slough off that responsibility onto another
01:54:08 9 pharmacist. You know, you could if it's after hours and you
01:54:13 10 couldn't get ahold of the prescriber to resolve that
01:54:16 11 particular red flag, you could then leave it for when the
01:54:24 12 doctor's office is open to contact the doctor the next day.
01:54:26 13 But to just say, you know what, I'm not filling this, you
01:54:29 14 fill it, you can't do that, or you shouldn't do that.

01:54:32 15 **Q** I'll direct your attention to the box at the bottom of
01:54:34 16 the first page of the 2011 good faith dispensing policy.

01:54:38 17 Do you see that?

01:54:40 18 **A** Yes.

01:54:41 19 **Q** It says, among other things, it says, "If asked by law
01:54:49 20 enforcement to dispense a fraudulent prescription, do not
01:54:54 21 dispense and inform law enforcement that this is a violation
01:54:57 22 of state and federal law."

01:55:00 23 Why is that in the 2011 policy?

01:55:02 24 **A** We were starting to see patients that were trying to
01:55:07 25 pass fraudulent prescriptions, and the law enforcement would

01:55:12 1 come into the store and say, we know this person is going to
01:55:17 2 give you a fraudulent prescription, and we want you to fill
01:55:20 3 it because we want to arrest the patient after they get the
01:55:25 4 medication.

01:55:26 5 **Q** Was that something that was okay for a pharmacist at
01:55:28 6 Walgreens to do, in your view?

01:55:30 7 **A** No.

01:55:30 8 **Q** In fact, could a pharmacist get fired for doing that?

01:55:34 9 **A** Yes.

01:55:35 10 **Q** Even if a law enforcement official asked them to do
01:55:38 11 it?

01:55:38 12 **A** Yes.

01:55:38 13 **Q** And you can see the bottom part of the box says,
01:55:46 14 "Violation of state and federal law and/or company policy
01:55:51 15 will result in disciplinary action, up to and including
01:55:55 16 termination of employment."

01:55:58 17 Did I read that correctly?

01:55:59 18 **A** Yes.

01:55:59 19 **Q** Does Walgreens fire pharmacists who fail to follow the
01:56:02 20 law?

01:56:02 21 **A** Yes.

01:56:02 22 **Q** Does Walgreens fire pharmacists who knowingly dispense
01:56:07 23 illegitimate prescriptions?

01:56:09 24 **A** Yes.

01:56:09 25 **Q** Has that been the case for as long as you've been

01:56:13 1 working at Walgreens, as far as you know?

01:56:14 2 **A** Yes.

01:56:22 3 **Q** All right. Take a look at Tab 4 in your binder,

01:56:24 4 please. This is WAG-MDL-304.

01:56:33 5 Do you recognize what that is, Ms. Polster?

01:56:35 6 **A** Yes.

01:56:36 7 **Q** What is it?

01:56:36 8 **A** It's the 2012 updated good faith dispensing policy.

01:56:44 9 **Q** This one is longer than the previous policies we've

01:56:47 10 looked at, would you agree with me?

01:56:48 11 **A** Yes.

01:56:49 12 **Q** How many pages is it?

01:56:56 13 **A** Six.

01:56:56 14 **Q** I'm going to direct your attention first to the third
01:56:59 15 paragraph on the first page.

01:57:06 16 Would you agree me there again it says that "a
01:57:08 17 pharmacist at Walgreens who does not follow the good faith
01:57:11 18 dispensing policy can be fired"?

01:57:12 19 **A** Yes.

01:57:12 20 **Q** And we saw that before, right?

01:57:15 21 **A** Yes.

01:57:18 22 **Q** Would you agree with me that knowing you can get fired
01:57:20 23 for not following company policy is an incentive to follow
01:57:22 24 the policy?

01:57:25 25 **A** I would think so, yes.

01:57:26 1 Q Walgreens tells its pharmacists they could lose their
01:57:30 2 jobs if they don't follow the good faith dispensing policy
01:57:32 3 around red flags, correct?

01:57:33 4 | A Yes.

01:57:33 5 Q Could a pharmacist lose their license if they
01:57:38 6 knowingly dispense illegitimate prescriptions?

01:57:41 7 **A** It is possible that a board of pharmacy would take
01:57:46 8 action on a pharmacist, yes.

01:57:46 9 Q Is that something pharmacists know? Is that something
01:57:49 10 you know as a pharmacist?

01:57:50 11 MR. WEINBERGER: Objection.

01:57:51 12 Q Do you know that as a pharmacist?

01:57:53 13 | **A** Yes.

01:57:53 14 Q All right. Then the
01:58:00 15 little bit different than
01:58:03 16 would you agree with that?

01:58:05 17 | A Yes.

01:58:05 18 Q I'm going to call out item number 3 on the bottom of
01:58:12 19 the first page.

01:58:13 20 | Do you see that?

01:58:13 21 | A Yes.

01:58:13 22 Q It says, "Prescription drug monitoring program, or
01:58:17 23 PDMP." The jury has heard a lot about PDMPs. That's the
01:58:23 24 state database of controlled substance prescriptions that
01:58:26 25 are filled by pharmacies in a given state. Is that a fair

01:58:30 1 characterization?

01:58:31 2 **A** Yes.

01:58:31 3 **Q** Were PDMPs becoming more available in this time frame
01:58:37 4 in 2012?

01:58:38 5 **A** Yes.

01:58:41 6 **Q** Did Walgreens provide access to state PDMPs for
01:58:44 7 pharmacists whenever they became available?

01:58:46 8 **A** Yes.

01:58:46 9 **Q** Was Walgreens a frontrunner when it came to making
01:58:52 10 PDMPs available to its pharmacists?

01:58:54 11 MR. WEINBERGER: Objection.

01:58:59 12 THE COURT: Sustained.

01:59:00 13 **Q** Do the requirements for checking the state PDMP vary
01:59:06 14 from state to state?

01:59:07 15 **A** Yes.

01:59:07 16 **Q** If checking the PDMP in a particular type of
01:59:12 17 circumstance is required by state law, does Walgreens
01:59:16 18 require pharmacists do that that, to follow that law?

01:59:20 19 **A** Yes.

01:59:20 20 **Q** All right. Another item that's new, I think, to this
01:59:29 21 2012 policy is the last item on this page. It says,
01:59:37 22 "Data/DUR review."

01:59:39 23 What does that mean?

01:59:41 24 **A** The data review is ensuring that the information that
01:59:47 25 is typed into the computer system matches exactly what the

01:59:51 1 prescriber wrote.

01:59:53 2 And the DUR review is drug utilization review. That
02:00:00 3 is where a drug interaction or an alert would show to the
02:00:04 4 pharmacist about the specific prescription they're filling.

02:00:06 5 **Q** Would the drug interaction alert that you just
02:00:11 6 referred to, would that capture things like the cocktail
02:00:14 7 prescriptions you were talking about before?

02:00:15 8 **A** Yes.

02:00:16 9 **Q** Why is that? How does that work?

02:00:19 10 **A** We work with a vendor to review the patient's file,
02:00:29 11 and it -- the profile hits up against the vendor's database
02:00:34 12 that contains information about the drugs. And then it --
02:00:43 13 any drug interaction would be displayed back to the
02:00:52 14 pharmacist in the filling of the prescription.

02:00:54 15 **Q** So just to make sure I understand, is what you're
02:00:56 16 saying that there is something in the computer system that
02:01:00 17 will alert the pharmacist if somebody comes in with a
02:01:03 18 prescription for an opioid and they're already taking
02:01:06 19 another drug that might have a bad interaction with that
02:01:08 20 opioid?

02:01:09 21 MR. WEINBERGER: Objection, Your Honor.

02:01:11 22 **Q** Is that what you were saying?

02:01:12 23 THE COURT: Sustained.

02:01:23 24 **Q** Am I correct that the DUR review is meant to identify
02:01:26 25 drug-drug interactions?

02:01:27 1 **A** Yes.

02:01:30 2 **Q** If you'll turn to page 2 of the 2012 policy. And at
02:01:35 3 the beginning of this page 2 it talks about in the second
02:01:40 4 paragraph it says, "The following are examples that should
02:01:44 5 alert the pharmacist to questionable circumstances."

02:01:46 6 That's similar language to what we've seen going back
02:01:48 7 to 1998, would you agree with me?

02:01:50 8 **A** Yes.

02:01:50 9 **Q** It says, "The list is not intended to be all
02:01:54 10 inclusive."

02:01:54 11 Do you see that?

02:01:55 12 **A** Yes.

02:01:55 13 **Q** And it says, "The pharmacist has a responsibility to
02:01:59 14 follow up with the patient and/or the prescriber to make
02:02:01 15 sure the elements of good faith dispensing are met."

02:02:05 16 Did I read that correctly?

02:02:06 17 **A** Yes.

02:02:06 18 MR. WEINBERGER: Your Honor, she's not reading
02:02:11 19 from the -- she's not correctly reading the document. She's
02:02:16 20 paraphrasing. I mean --

02:02:18 21 MS. SWIFT: I'm trying to move it along, but
02:02:19 22 I'm happy to read it all if --

02:02:21 23 THE COURT: Well, let's just go on the
02:02:23 24 headphones a minute.

02:02:29 25 (At side bar at 2:02 p.m.)

02:02:35 1 THE COURT: I'll remind both sides, if you're
02:02:40 2 examining a witness with a document that they know, you can
02:02:44 3 read a paragraph or a sentence or two and say what does that
02:02:45 4 mean, et cetera, but it's got to be read accurately. If you
02:02:48 5 want to do it a different way, you can do it a different
02:02:50 6 way. But if you're going to read it, it's going to be
02:02:54 7 reading it exactly.

02:02:55 8 MS. SWIFT: Understood, Your Honor. Thank
02:02:56 9 you.

02:03:02 10 (In open court at 2:03 p.m.)

02:03:21 11 BY MS. SWIFT:

02:03:21 12 Q Ms. Polster, I'm going to go back for one minute to
02:03:25 13 the provision on the first page about the PDMP requirement
02:03:30 14 in this policy. I just want to make sure this is clear.

02:03:32 15 This good faith dispensing policy reads exactly: "If
02:03:38 16 available in your state, use the PDMP to obtain additional
02:03:41 17 information to help determine the validity and confirm the
02:03:46 18 appropriateness of the prescription."

02:03:49 19 Did I read that accurately?

02:03:51 20 A Yes.

02:03:51 21 Q Is that a requirement of the good faith dispensing
02:03:53 22 policy regardless whether state law also requires it?

02:04:00 23 MR. WEINBERGER: Objection.

02:04:01 24 Q Is it a requirement --

02:04:03 25 MS. SWIFT: I'll withdraw the question.

02:04:04 1 THE COURT: I'll allow that question.

02:04:05 2 Q Is it a requirement of the policy?

02:04:06 3 A Yes, if the pharmacist needs it to determine the
02:04:13 4 appropriateness of the prescription, yes.

02:04:15 5 Q All right. Turning back to page 2 of the 2012 policy.

02:04:21 6 The second paragraph starts out, "The following are
02:04:27 7 examples that should alert a pharmacist to questionable
02:04:29 8 circumstances."

02:04:34 9 Do you see that?

02:04:35 10 A Yes.

02:04:35 11 Q Then below that sentence there are a number of other
02:04:39 12 sentences, and then there are boxes at the bottom of the
02:04:41 13 page.

02:04:42 14 Would you agree with me?

02:04:43 15 A Yes.

02:04:43 16 Q Are those boxes providing different examples of red
02:04:51 17 flags?

02:04:51 18 A Yes.

02:04:52 19 Q And if you look onto the following pages, there are
02:04:56 20 more even than just what's on page 2, correct?

02:04:58 21 A Yes.

02:04:58 22 Q The first box says, "Usual course of professional
02:05:11 23 practice."

02:05:11 24 Do you see that?

02:05:12 25 A Yes.

02:05:12 1 **Q** Would you agree with me that some of the examples of
02:05:17 2 red flags in this box in the 2012 policy are the same as
02:05:22 3 what we saw before in the earlier policies?

02:05:25 4 **A** Yes.

02:05:25 5 **Q** It includes the unusual geographical distances red
02:05:30 6 flag.

02:05:30 7 Do you see that?

02:05:31 8 **A** Yes.

02:05:31 9 **Q** It also includes several other red flags; would you
02:05:34 10 agree with that?

02:05:35 11 **A** Yes.

02:05:35 12 **Q** One of the new ones, I'll ask if you agree with this,
02:05:39 13 one of them says, "Does the prescription appear to be issued
02:05:43 14 pursuant to an online diagnosis questionnaire?"

02:05:48 15 Do you see that?

02:05:48 16 **A** Yes.

02:05:48 17 **Q** What is an online diagnosis questionnaire?

02:05:50 18 **A** At that time, we were starting to see prescribers that
02:06:02 19 were prescribing prescriptions for patients that they may
02:06:05 20 not have had a relationship with, that the patient could
02:06:08 21 have gone online and filled out a questionnaire, and the
02:06:10 22 prescriber took that questionnaire and phoned in a
02:06:16 23 prescription or sent a prescription to that patient.

02:06:20 24 **Q** Why is that a concern, if it is?

02:06:22 25 **A** One of the requirements in dispensing a controlled

02:06:31 1 substance, or any prescription really, is to make sure that
02:06:35 2 there is a doctor/patient relationship, that the doctor
02:06:38 3 knows the patient that they are prescribing for.

02:06:45 4 **Q** And do you see the box that says, "Trends for
02:06:49 5 prescribers and patients"?

02:06:50 6 **A** Yes.

02:06:50 7 **Q** Do you see the bullet that says, "Frequent combination
02:06:59 8 prescriptions for known drug cocktails, such as
02:07:04 9 benzodiazapine, opioid, and carisoprodol?

02:07:09 10 **A** Yes.

02:07:09 11 **Q** Is this a more detailed example on unusual
02:07:12 12 combinations than what we saw on that in early policies?

02:07:16 13 **A** Yes.

02:07:16 14 **Q** Why was that spelled out more specifically in the 2012
02:07:20 15 policy?

02:07:20 16 **A** Well, about that time we started to see more of that
02:07:23 17 practice, and the DEA and the industry was using that word,
02:07:30 18 cocktails. And we added that to the policy to ensure that
02:07:34 19 our pharmacists had awareness about that.

02:07:38 20 **Q** Now, I'd like to you turn to page 3 of the 2012
02:07:41 21 policy, if you would, please.

02:07:44 22 Do you see at the top of the page the box that says
02:07:47 23 "Prescribers"?

02:07:48 24 **A** Yes.

02:07:48 25 **Q** Is this a more detailed list of red flags for

02:07:54 1 prescribers than what we saw before?

02:07:55 2 **A** Yes.

02:07:56 3 **Q** And do you see there's also a box that says

02:08:03 4 "Patients"?

02:08:03 5 **A** Yes.

02:08:03 6 **Q** Is this a more detailed list of red flags for patients
02:08:06 7 than what we saw before?

02:08:08 8 **A** Yes.

02:08:08 9 **Q** The list for patients, let's see if I can find it, it
02:08:17 10 includes "request to pay by cash or by using a cash discount
02:08:22 11 card."

02:08:23 12 Do you see that?

02:08:24 13 **A** Yes.

02:08:24 14 **Q** The jury has heard a bit about this before, but why
02:08:30 15 might cash payment be a concern that you'd want a pharmacist
02:08:33 16 to look out for?

02:08:34 17 **A** It's not always a concern, but it would be unusual if
02:08:38 18 the patient has insurance, and they're asking the pharmacy
02:08:42 19 staff to not bill their insurance when filling the
02:08:45 20 prescription.

02:08:45 21 **Q** Can a pharmacist see when they're in the Walgreens
02:08:49 22 computer system whether or not a patient has insurance?

02:08:52 23 **A** Yes.

02:08:52 24 **Q** Then on page 4 of the 2012 good faith dispensing
02:09:00 25 policy there's a section that says "Document."

02:09:03 1 Do you see that at the top of the page?

02:09:05 2 **A** Yes.

02:09:05 3 **Q** Do you take steps to do what you can to get the
02:09:08 4 pharmacists to document the resolution of red flags?

02:09:11 5 **A** Yes.

02:09:11 6 **Q** Is it up to the pharmacist in the first instance to
02:09:15 7 determine whether there is a red flag?

02:09:19 8 **A** Yes.

02:09:19 9 **Q** Why is that up to the pharmacist?

02:09:21 10 **A** Well, the pharmacist may know the circumstances around
02:09:29 11 the patient better than -- one better than the other, so a
02:09:33 12 pharmacist that is always at that store that knows that
02:09:35 13 patient, but if there's a pharmacist that's new to that
02:09:40 14 location, a floater pharmacist, they're filling in on
02:09:43 15 vacation or something like that, and they're not familiar
02:09:47 16 with the patient or the community or the prescriber, that
02:09:51 17 pharmacist may see it as a red flag where another pharmacist
02:09:53 18 may not.

02:09:54 19 **Q** Is it necessary to re-document the same thing every
02:09:59 20 time a patient comes back to fill a prescription if it's
02:10:02 21 been resolved earlier?

02:10:03 22 MR. WEINBERGER: Objection.

02:10:04 23 **Q** Under Walgreens' policy?

02:10:07 24 MR. WEINBERGER: Objection.

02:10:08 25 THE COURT: Overruled.

02:10:09 1 **A** No, because if it's not a red flag to the pharmacist,
02:10:12 2 then we would not expect them to document the resolution.

02:10:16 3 **Q** And coming at that from a different angle, just
02:10:20 4 because a pharmacist documented the resolution of a red flag
02:10:24 5 on an earlier prescription, does that relieve the later
02:10:29 6 pharmacist reviewing and evaluating the later prescription?

02:10:34 7 **A** Well, each pharmacist should be taking each
02:10:37 8 prescription on its own merit, but if -- if I was a
02:10:42 9 pharmacist and I saw that pain patient come in and I knew
02:10:48 10 the circumstances around that pain patient and I had already
02:10:53 11 done my due diligence on that specific page, that specific
02:10:56 12 doctor, that specific drug, and then that patient were to
02:11:00 13 come back and have the exact same prescription that was
02:11:03 14 written by the prescriber and the time made sense, I may not
02:11:08 15 go to as many steps as I did before because it wasn't a red
02:11:14 16 flag. It would be appropriate for that time and that
02:11:17 17 circumstance.

02:11:19 18 **Q** Ms. Polster, is it fair to say that you have spent
02:11:20 19 years working on policies and procedures and training
02:11:24 20 regarding those policies and procedures for the dispensing
02:11:26 21 of controlled substance at Walgreens?

02:11:29 22 **A** Yes.

02:11:30 23 **Q** Based on that experience and based on your knowledge
02:11:35 24 of how Walgreens pharmacists document the resolution of red
02:11:40 25 flags, do you have concerns that diligence is not being done

02:11:43 1 at Walgreens?

02:11:44 2 MR. WEINBERGER: Objection.

02:11:55 3 THE COURT: Overruled.

02:11:55 4 **A** Can I say that I -- that diligence is done a hundred
02:12:03 5 percent on every single prescription? I cannot. We have to
02:12:05 6 ensure that our pharmacists understand their corresponding
02:12:09 7 responsibility and doing their due diligence.

02:12:14 8 I have concerns that our policies are in place and
02:12:17 9 that our pharmacists are following what we're asking them to
02:12:21 10 do and that they understand their corresponding
02:12:25 11 responsibility when they are filling a controlled substance.

02:12:26 12 **Q** And do you believe that as a general matter the
02:12:28 13 pharmacists at Walgreens do that?

02:12:30 14 MR. WEINBERGER: Objection.

02:12:30 15 THE COURT: No, overruled.

02:12:35 16 **A** I do.

02:12:36 17 **Q** Is it true -- and I think you've said a little bit
02:12:39 18 about this already. I'll try not to belabor it. You
02:12:44 19 mentioned the floater pharmacist. I think you said at the
02:12:47 20 beginning of your testimony, you're answering my questions
02:12:50 21 today, that you yourself were a floater pharmacist.

02:12:52 22 Do I have that right?

02:12:54 23 **A** Yes.

02:12:55 24 **Q** Would you expect that floater pharmacist -- well,
02:12:59 25 strike that. Let me try to come at this a different way.

02:13:02 1 Is it true that whether a prescription presents a red
02:13:04 2 flag to begin with depends on the knowledge of the
02:13:08 3 pharmacist who's reviewing the prescription?

02:13:11 4 **A** Yes.

02:13:14 5 **Q** Would you expect a pharmacist who regularly works at a
02:13:18 6 pharmacy and knows the patients and the doctors in the
02:13:22 7 community, to have more knowledge about those patients than
02:13:24 8 a pharmacist who's new to the job or is it floater?

02:13:28 9 **A** New to the location and the prescribing practices and
02:13:32 10 maybe that specific patient, yes.

02:13:37 11 **Q** How might a floater pharmacist's identification of red
02:13:41 12 flags differ from a pharmacist who regularly works in the
02:13:46 13 pharmacy?

02:13:48 14 **A** Let's say that you're at a small rural community, and
02:13:58 15 I'm not familiar with Ohio so I'm going to use Illinois as
02:14:03 16 an example.

02:14:04 17 But you're in a farming community in the middle of the
02:14:07 18 state, and a patient brings a prescription from Northwestern
02:14:14 19 Hospital, which is a big hospital in Chicago. There's a lot
02:14:17 20 of specialists there. There may be a -- it may be a far
02:14:24 21 distance to get from Northwestern to the pharmacy that I'm
02:14:28 22 working at in the small rural community in Illinois, and
02:14:32 23 that could be a red flag to the floater pharmacist as to why
02:14:34 24 is that patient going all the way to Northwestern to get
02:14:38 25 that prescription.

02:14:39 1 **Q** If a patient who is known to you as not having
02:14:49 2 insurance pays cash for a prescription and drives 26 miles
02:14:54 3 for an explainable reason, is that a red flag that needs to
02:15:00 4 be documented?

02:15:01 5 **A** Not necessarily.

02:15:05 6 **Q** As a pharmacist for more than three decades, has it
02:15:08 7 ever been your understanding that there is a legal
02:15:11 8 requirement to document the resolution of red flags?

02:15:17 9 **A** Not a legal requirement. A best practice.

02:15:20 10 **Q** If you're talking about a pharmacist's obligation to
02:15:25 11 document, are you talking about it in terms of the best
02:15:27 12 practice and what is required by the Walgreens policy?

02:15:29 13 **A** Yes.

02:15:29 14 **Q** All right. If you'd take a look at page 4 of the 2012
02:15:36 15 good faith dispensing policy.

02:15:38 16 Do you see the section with the heading "Refusal to
02:15:42 17 dispense"?

02:15:45 18 **A** Yes.

02:15:46 19 **Q** It says, "If the prescriber informs the pharmacist
02:15:53 20 that a prescription for a controlled substance is valid but
02:15:57 21 the pharmacist determines that the elements of good faith
02:15:59 22 dispensing are not present, the pharmacist has a
02:16:02 23 responsibility to refuse to dispense."

02:16:04 24 Did I read that correctly?

02:16:06 25 **A** Yes.

02:16:06 1 **Q** We've seen similar language, not exactly like this, in
02:16:11 2 early policies; would you agree to that?

02:16:13 3 **A** Yes.

02:16:13 4 **Q** Is the obligation to refuse a prescription that does
02:16:19 5 not meet the elements of good faith or that has red flags
02:16:23 6 that cannot be resolved, the obligation to refuse that
02:16:27 7 prescription, is that in Walgreens' good faith dispensing
02:16:31 8 policy today?

02:16:31 9 **A** Yes.

02:16:32 10 **Q** Has it always been part of Walgreens' good faith
02:16:35 11 dispensing?

02:16:35 12 **A** Yes.

02:16:35 13 **Q** If you'll take a look at page 6 of the 2012 policy.
02:16:48 14 Do you see the summary of good faith dispensing
02:16:54 15 procedures by role and responsibility?

02:16:55 16 **A** Yes.

02:16:56 17 **Q** Does this -- what is this?

02:17:00 18 **A** It's just another way to display the responsibility of
02:17:06 19 each employee back in the pharmacy, whether it be a
02:17:12 20 technician or a pharmacist.

02:17:13 21 **Q** Were these steps that either the pharmacy tech or the
02:17:16 22 pharmacist was taking even before the steps were laid out
02:17:21 23 like this in a flowchart in the policy?

02:17:24 24 **A** Yes.

02:17:24 25 **Q** Why did you decide to include this in the 2012 policy?

02:17:27 1 **A** You know, we tried to -- you know, as things progress
02:17:34 2 and change and you learn different things, you get feedback
02:17:37 3 from the field and other places, we tried to shake things up
02:17:41 4 a little bit to, you know, display them differently, find
02:17:46 5 different ways. People learn in different ways, people
02:17:49 6 remember in different ways. And this is an example where we
02:17:52 7 just, you know, did it in like a flowchart rather than
02:17:57 8 spelling it all out.

02:17:58 9 **Q** There are a number of steps in the filling of a
02:18:03 10 prescription for controlled substances; would you agree with
02:18:05 11 that?

02:18:05 12 **A** Yes.

02:18:06 13 **Q** Are all of the steps laid out in this flowchart or is
02:18:10 14 it just a summary?

02:18:10 15 **A** It's probably just a summary.

02:18:13 16 **Q** A number of the boxes say "shared responsibility," and
02:18:20 17 then one of them says "ultimate responsibility."

02:18:23 18 What does that refer to?

02:18:24 19 **A** So everybody back in the pharmacy has a responsibility
02:18:29 20 to ensure that a prescription is being dispensed in good
02:18:33 21 faith. If the technician knows that the prescription is
02:18:35 22 fraudulent, then they should say something to the
02:18:38 23 pharmacist, you know, point it out.

02:18:39 24 But the ultimate responsibility for dispensing a
02:18:43 25 controlled substance at Walgreens is the final check

02:18:46 1 pharmacist that puts the pills in the bottle before they
02:18:50 2 dispense the prescription to the patient.

02:18:53 3 **Q** There are a number of -- well, it looks like to me but
02:18:57 4 tell me if I'm wrong, it looks like there are a number of
02:19:01 5 steps along in the process where someone, either a tech or a
02:19:06 6 pharmacist, can alert someone of questionable prescriptions.

02:19:10 7 Is that a fair summary or correct me if I'm wrong?

02:19:13 8 **A** Yes, that's correct.

02:19:13 9 **Q** I also see it looks like a number of checks,
02:19:17 10 especially the last three steps in the process. There are a
02:19:21 11 number of checks that repeat for each process.

02:19:23 12 Do you see that?

02:19:24 13 **A** Yes.

02:19:25 14 **Q** It says, "Check patient ID, verify DEA, use PDMP,
02:19:31 15 review profile, evaluate GFD" -- that's good faith
02:19:37 16 dispensing?

02:19:37 17 **A** Yes.

02:19:37 18 **Q** -- "document, pharmacist action, notify DEA, and
02:19:46 19 Assign CAP."

02:19:50 20 Why are those checks listed at each phase of this
02:19:53 21 process?

02:19:53 22 **A** They can be done at any of those phases, and so we
02:19:57 23 were calling it out that, you know, if a DUR review
02:20:01 24 pharmacist felt that additional action needed to be taken or
02:20:05 25 they took additional action, we were expecting them to

02:20:09 1 document if they did.

02:20:12 2 But it didn't necessarily have to happen at that
02:20:15 3 phase.

02:20:16 4 **Q** All right. I don't want to spend too much time on the
02:20:19 5 steps.

02:20:21 6 Does greet and scan mean what it sounds like, you
02:20:24 7 greet the patient and scan the prescription?

02:20:27 8 **A** Yes.

02:20:27 9 **Q** And the tech or the pharmacist could do that?

02:20:28 10 **A** Yes.

02:20:29 11 **Q** Data entry, again, is that just what it sounds like?

02:20:33 12 **A** Yes.

02:20:34 13 **Q** We've talked about data review and DUR. Is that the
02:20:37 14 phase of the filling process when somebody checks for
02:20:42 15 drug-drug interactions and maybe does other things as well?

02:20:44 16 **A** Yes.

02:20:45 17 **Q** What is product review?

02:20:47 18 **A** Product review is ensuring that the right pill is in
02:20:51 19 the right bottle for the right patient based on the
02:20:54 20 prescription that was written.

02:20:56 21 **Q** What is consultation?

02:20:58 22 **A** So consultation is a conversation that the pharmacist
02:21:03 23 would have with the patient or the caregiver about that
02:21:06 24 specific prescription.

02:21:07 25 **Q** And for each of these steps it says "tech or RPH, for

02:21:14 1 pharmacist, or it just says pharmacist or RPH?

02:21:17 2 **A** Correct.

02:21:17 3 **Q** Are some of these steps steps that they technician can
02:21:20 4 do and some only a pharmacist accounted?

02:21:23 5 **A** Correct.

02:21:23 6 **Q** Which of the steps in the filling process does a
02:21:26 7 pharmacist have to do?

02:21:28 8 **A** The pharmacist must do the data DUR review, they must
02:21:34 9 do the final product check, and they must be -- they must be
02:21:42 10 the person that has the conversation with the patient or the
02:21:46 11 caregiver.

02:21:47 12 However, an intern under the supervision of a
02:21:51 13 pharmacist might also do consultation.

02:21:54 14 **Q** Does this flowchart mean to suggest that several techs
02:21:59 15 and several pharmacists will be involved in filling every
02:22:02 16 prescription?

02:22:02 17 **A** It could mean that.

02:22:04 18 **Q** But it doesn't necessarily mean that?

02:22:05 19 **A** Correct.

02:22:05 20 **Q** Could it all be the same pharmacist?

02:22:07 21 **A** In some cases.

02:22:13 22 **Q** I did like for you to pull out of the your stack one
02:22:16 23 of the documents that the plaintiffs' lawyer asked you
02:22:19 24 about. It's Plaintiffs' Exhibit 25631. It's an October
02:22:23 25 2012 e-mail with a Controlled Substance Action Plan attached

02:22:29 1 to it.

02:22:40 2 This is what the first page of it looks like. I've
02:22:43 3 got it up on the screen.

02:22:44 4 **A** Yes.

02:22:45 5 **Q** And just to orient you, Ms. Polster, the policy we
02:22:48 6 were just looking at was from June of 2012.

02:22:50 7 Do you recall that?

02:22:51 8 **A** Yes.

02:22:51 9 **Q** This e-mail and attachment that the plaintiffs' lawyer
02:22:54 10 showed you is dated October 2012.

02:22:56 11 Do you see that?

02:22:56 12 **A** Yes.

02:22:57 13 **Q** Would you agree with me -- first, before I ask you
02:23:00 14 this question, I'll ask you just to flip through Plaintiffs'
02:23:06 15 25631 to refamiliarize yourself with it.

02:23:08 16 **A** Yes.

02:23:09 17 **Q** Would you agree with me that the October 2012
02:23:13 18 presentation is very similar to a June 2012 presentation
02:23:19 19 that is behind your Tab 5 in your binder as Exhibit 15314?

02:23:36 20 **A** Yes.

02:23:36 21 **Q** So turning back to the one I've got on the screen from
02:23:39 22 October, who were you giving -- or who was supposed to
02:23:41 23 receive the presentation from October of 2012?

02:23:46 24 **A** This was for -- this was intended for market leaders.
02:23:52 25 It was sort of a train the trainer or for them to understand

02:24:02 1 everything around good faith dispensing and the changes and
02:24:05 2 updates in the policy.

02:24:08 3 **Q** And then with respect to the June 2012 version of this
02:24:12 4 presentation that is behind Tab 5, who was supposed to
02:24:15 5 receive that one? Was it the same type of people or a
02:24:20 6 different group?

02:24:21 7 **A** Correct, the same.

02:24:22 8 **Q** Was it for the same purpose?

02:24:24 9 **A** Yeah, so, you know, Walgreens is a very large company,
02:24:28 10 and we do use a train the trainer type of training that goes
02:24:34 11 down, so it would go to different levels of field leaders
02:24:39 12 down to district managers who then would ensure that their
02:24:45 13 stores were trained appropriately, their pharmacists were
02:24:48 14 trained appropriately.

02:24:51 15 **Q** All right. I'll turn to I believe this is page 7. It
02:24:56 16 says 6 on the slide, but it's the seventh page in the
02:24:58 17 document.

02:24:59 18 Are these validation -- and I'm looking at the one
02:25:02 19 that was from October of 2012 now.

02:25:04 20 Are these validation procedures for good faith
02:25:07 21 dispensing that are included in the train the trainer
02:25:10 22 presentation from October 2012 the same procedures we walked
02:25:14 23 through in the June 2012 policy?

02:25:16 24 **A** Yes.

02:25:16 25 **Q** And then if you turn to the next page, do you see the

02:25:22 1 one that says, "Everyone plays a role in the good faith
02:25:25 2 dispensing process"?

02:25:26 3 **A** Yes.

02:25:26 4 **Q** Does this walk through the -- it looks different, but
02:25:31 5 does this walk through the same set of steps for filling a
02:25:34 6 controlled substance prescription that we saw in the 2012
02:25:37 7 policy?

02:25:37 8 **A** Yes.

02:25:37 9 **Q** And are these bullets that are underneath each of
02:25:41 10 these steps taken from the Walgreens good faith dispensing
02:25:45 11 policy, this is what the policy says you're supposed to do?

02:25:48 12 **A** Yes.

02:25:49 13 **Q** Whether it's with respect to reviewing the PDMP --
02:25:52 14 that's something that the Walgreens policy requires you to
02:25:55 15 do, correct?

02:25:55 16 **A** Yeah, based on the state regulations, yes.

02:26:00 17 **Q** Well, even if it's not required by stay law, this
02:26:05 18 policy requires pharmacists to check the PDMP if it's
02:26:08 19 appropriate to do so?

02:26:08 20 **A** Yes.

02:26:09 21 **Q** Is the same true with respect to the bullet that says
02:26:14 22 document information that's coming from the Walgreens
02:26:16 23 policy?

02:26:16 24 **A** Yes.

02:26:17 25 **Q** Okay. All right. I'd like you to take out another

02:26:28 1 one of the exhibits that the plaintiffs' lawyer asked you
02:26:32 2 about. This one is Plaintiffs' Exhibit 20639. I believe
02:26:37 3 it's one of your PowerPoint presentations.

02:26:52 4 **A** Okay.

02:26:53 5 **Q** Is that what I've got up on the screen?

02:26:57 6 **A** Yes.

02:26:59 7 **Q** What is your best guess as to what the date is
02:27:02 8 supposed to be on this presentation?

02:27:03 9 **A** January of 2013.

02:27:05 10 **Q** Okay. Is this another presentation that you and your
02:27:09 11 team used to train field leaders?

02:27:12 12 **A** Yes.

02:27:13 13 **Q** Who was the audience for this presentation?

02:27:14 14 **A** The market leadership, they were -- they're the level
02:27:20 15 above the district managers in our organization.

02:27:23 16 **Q** All right. If you would, please, I'm going to take
02:27:26 17 you, and if you can turn yourself too, to page 11, which is
02:27:31 18 a slide that the plaintiffs' lawyer asked you about.

02:27:34 19 THE COURT: Is there a document number on --
02:27:36 20 it's 20639?

02:27:38 21 MS. SWIFT: 20639.

02:27:40 22 THE COURT: Thank you.

02:27:42 23 MS. SWIFT: Do you have it, Your Honor? We
02:27:44 24 can give you a copy.

02:27:45 25 THE COURT: Yes, I have it.

02:27:48 1 **Q** And I'm going to call out the speaker notes and ask
02:27:51 2 you about them.

02:27:52 3 Do you recall being asked about the speaker notes with
02:27:56 4 the plaintiffs' lawyer?

02:27:57 5 **A** Yes.

02:27:57 6 **Q** And you were not given an opportunity to explain what
02:28:02 7 you meant by this last note here about good customers
02:28:14 8 impacting other business.

02:28:15 9 What did you mean by this speaker note?

02:28:18 10 **A** So the intent of this was explaining to the market
02:28:22 11 leaders to explain to the district leaders that the
02:28:28 12 obligation of a pharmacist is to make sure that they're
02:28:32 13 filling prescriptions on good faith and the prescriptions
02:28:35 14 that they are filling are legitimate with, you know -- good
02:28:39 15 customers would be somebody who's bringing in a legitimate
02:28:42 16 prescription that was written in good faith.

02:28:45 17 We wanted them to understand that, listen, if your
02:28:50 18 pharmacists are refusing prescriptions that -- for
02:28:54 19 prescriptions that they don't feel that they meet good
02:28:57 20 faith, either the prescriber isn't writing it in good faith
02:29:00 21 or there are questions about the patient, that, you know,
02:29:04 22 that's okay. We're supporting our pharmacy -- our
02:29:08 23 pharmacists in making those decisions, and that the field
02:29:11 24 leaders need to understand that that's okay, because we
02:29:15 25 don't want them filling prescriptions that they feel they

02:29:18 1 should not be filling.

02:29:19 2 Q All right. I'm going to take you now to page 19 of
02:29:24 3 the slide deck.

02:29:25 4 Do you remember being asked questions about this slide
02:29:27 5 that shows the linear regression analysis for the order
02:29:33 6 monitoring system that's in place at Walgreens?

02:29:34 7 A Yes.

02:29:35 8 Q You said in your notes on this slide that "outliers
02:29:42 9 will see a decrease or in some cases will stop shipping
02:29:46 10 certain controlled substances to them."

02:29:49 11 The plaintiffs' lawyer didn't give you an opportunity
02:29:51 12 to explain what you meant there either. What did you mean?

02:29:54 13 A So the way the ordering system works is that we
02:29:58 14 compare the ordering of bottles of controlled substances
02:30:05 15 from store to store based on peer group. Meaning that a
02:30:10 16 store that is doing 200 prescriptions a day would be
02:30:13 17 compared to other stores doing 200 prescriptions a day
02:30:16 18 across the country.

02:30:17 19 A store that is dispensing a larger quantity of
02:30:25 20 prescriptions total may need more controlled substances
02:30:27 21 because they have more business.

02:30:30 22 So what this was intended was that we're putting
02:30:37 23 ceilings in place, and in some cases a store that -- a
02:30:47 24 store's order might hit up against that ceiling even though
02:30:50 25 they were compared to another store. Maybe they tried to

02:30:55 1 order or maybe the ordering system was trying to bring in
02:30:59 2 more bottles of that particular medication based on the
02:31:02 3 business that they were seeing over the rolling six-week
02:31:05 4 period of time.

02:31:07 5 What I was explaining to the field leaderships in this
02:31:12 6 slide was that we're going to have new steps and we're going
02:31:16 7 to require those stores to fill out an order monitoring form
02:31:22 8 or an ordering form that if they needed more bottles of a
02:31:28 9 certain medication, then what the ordering system was doing
02:31:33 10 for them, they needed to document that on the order form,
02:31:38 11 that they were an outlier, the ceiling was going to stop
02:31:41 12 that ordering system from ordering extra tablets. And if
02:31:47 13 the store needed it, they had to show me or my team why they
02:31:50 14 would need extra tablets, what was changing in their
02:31:53 15 business or what their business needed to explain why they
02:31:57 16 needed those additional tablets in their store brought in.

02:32:01 17 **Q** All right. Now, I want to switch gears a little bit.
02:32:07 18 We talked a bunch about a number of good faith dispensing
02:32:10 19 policies, but you said at the outset there are two policies
02:32:16 20 related to the dispensing of controlled substances.

02:32:17 21 Is the second one the target drug good faith
02:32:21 22 dispensing policy?

02:32:21 23 **A** Yes.

02:32:23 24 MS. SWIFT: I'm happy to keep going, Your
02:32:25 25 Honor, it's only 2:30, but I just wanted to check in.

02:32:27 1 THE COURT: Keep going.

02:32:28 2 Q Okay. All right. We'll do the target drug good faith
02:32:28 3 dispensing policy.

02:32:29 4 Take a look, if you would, Ms. Polster, at the
02:32:31 5 document behind Tab 8 of your binder.

02:32:37 6 A Okay.

02:32:37 7 Q Do you recognize that document as a target drug good
02:32:44 8 faith dispensing checklist?

02:32:44 9 A Yes.

02:32:44 10 Q I'm not certain this is exactly the same one that the
02:32:49 11 plaintiffs' lawyer showed you earlier today, but I'll ask
02:32:51 12 you the same question he did.

02:32:53 13 Is this an earlier version or a later version?

02:32:55 14 A This looks like a later version.

02:32:58 15 Q Why did you create -- well, first of all, let me take
02:33:04 16 a step back.

02:33:04 17 Who created the target drug checklist at Walgreens?

02:33:07 18 A The working group that would include my team.

02:33:10 19 Q Why was it created?

02:33:11 20 A We created it so that we would ensure consistency from
02:33:19 21 our stores, that we would give a process for stores to
02:33:24 22 follow -- or pharmacists to follow as they're filling
02:33:28 23 prescriptions, and additionally to point out to technicians
02:33:34 24 that they also had a responsibility to ensure that the
02:33:38 25 prescription was filled in good faith.

02:33:39 1 Q Did the DEA ask Walgreens to create the target drug
02:33:47 2 good faith dispensing policy and checklist?

02:33:48 3 A No.

02:33:48 4 Q Has DEA ever asked you to change the target drug
02:33:53 5 checklist?

02:33:54 6 MR. WEINBERGER: Objection. By the
02:33:58 7 plaintiffs' lawyer.

02:33:59 8 MS. SWIFT: I'll withdraw it.

02:34:03 9 Q Do you have an understanding, Ms. Polster, whether --
02:34:07 10 an understanding as a pharmacist whether a checklist like
02:34:10 11 this is required by law?

02:34:11 12 A It is not.

02:34:12 13 Q All right. We've seen the steps of this checklist
02:34:28 14 with another witness, so I'm not going to walk through all
02:34:30 15 of them and repeat all of that. But I do have a few
02:34:32 16 specific questions.

02:34:34 17 Step 7, I'll call it out for you, says, "If available
02:34:45 18 in your state, PDMP has been reviewed. Prescription is
02:34:48 19 being filled on time."

02:34:53 20 Is that same requirement part of the good faith
02:34:55 21 dispensing policy as well?

02:34:56 22

02:34:56 23 Q Then I'll call out for you step number 10.

02:35:10 24 Do you see that it says, "Per CDC recommendation,
02:35:15 25 naloxone was offered to the patient in case of an emergency."

02:35:18 1 for prescriptions that are greater than or equal to 50
02:35:23 2 morphine milligram equivalents, or MME"?

02:35:28 3 Do you see that?

02:35:28 4 **A** Yes.

02:35:28 5 **Q** What is the CDC recommendation that's being referred
02:35:31 6 to there?

02:35:32 7 **A** The CDC had put out a safety recommendation, and I
02:35:39 8 might not be using the right terminology, but that's the way
02:35:43 9 I view it, a safety recommendation that if a patient is
02:35:46 10 taking a high-dose opioid, they would be at risk for
02:35:50 11 respiratory arrest, that they would take -- if they
02:35:55 12 accidentally took too much. And naloxone should be offered
02:35:59 13 to the patient to let them know that that's something that
02:36:01 14 they could keep on hand because naloxone is an antidote for
02:36:08 15 an opioid overdose and could help save the patient's life.

02:36:14 16 **Q** Is information like the CDC recommendation that you
02:36:17 17 just described, is that publicly available information?

02:36:19 18 **A** Yes.

02:36:19 19 **Q** Is it information that you also provide to your
02:36:22 20 pharmacists?

02:36:25 21 **A** Yes.

02:36:32 22 **Q** I think you just explained what naloxone is. I think
02:36:35 23 you called it an antidote for an overdose. Is that a fair
02:36:39 24 description?

02:36:39 25 **A** Yes.

02:36:39 1 **Q** Is naloxone sometimes also called Narcan?

02:36:42 2 **A** It is.

02:36:43 3 **Q** Is Narcan the brand name or is it the other way
02:36:45 4 around?

02:36:46 5 **A** Narcan is the brand name.

02:36:47 6 **Q** The jury has heard a little bit about Narcan. Do you
02:36:50 7 know whether police officers typically carry Narcan with
02:36:52 8 them in case they encounter somebody having an overdosed?

02:36:56 9 **A** I have heard that.

02:36:57 10 **Q** So the CDC guideline to offer naloxone or Narcan to
02:37:02 11 patients with prescriptions greater than or equal to 350
02:37:07 12 MME, is that something that Walgreens pharmacists do?

02:37:14 13 **A** Yes, they do let the patient know that it's available
02:37:16 14 and they can sell that prescription with that -- or they
02:37:20 15 could sell that prescription item without a patient-specific
02:37:24 16 prescription based on the new regulations that happen for
02:37:27 17 this.

02:37:27 18 **Q** Does Narcan or naloxone save lives, in your
02:37:32 19 experience?

02:37:32 20 **A** Yes.

02:37:32 21 **Q** In your view, is the target drug checklist
02:37:37 22 perfunctory?

02:37:38 23 **A** No.

02:37:38 24 **Q** Why not?

02:37:41 25 **A** I just -- I've never thought of it as perfunctory. I

02:37:48 1 think the intent of it was to give the pharmacists a
02:37:52 2 framework to work by, but not intended to just check, check,
02:37:58 3 check, check, check, and it's okay to go. They have to
02:38:01 4 think through it for that specific patient and that specific
02:38:04 5 prescription.

02:38:06 6 **Q** All right. I'd like you to find in your stack of
02:38:07 7 exhibits from the plaintiffs' lawyers the one about the BCI
02:38:14 8 presentation.

02:38:15 9 Do you remember that one with the big red arrow?

02:38:20 10 **A** I do. Do you have the number?

02:38:21 11 **Q** I do. It's P-15085.

02:38:28 12 **A** Okay.

02:38:32 13 **Q** Do you remember giving us questions about this
02:38:34 14 presentation during the cross-examination?

02:38:38 15 **A** Yes.

02:38:40 16 **Q** And just to reorient the jury, this is the
02:38:44 17 presentation -- go to the first page of it -- "It's a good
02:38:49 18 faith dispensing DM webinar."

02:38:51 19 Do you see that?

02:38:51 20 **A** Yes.

02:38:52 21 **Q** This is a presentation about the BCI audit that
02:38:54 22 Walgreens loss prevention conducted on a sample of 2400
02:39:00 23 stores to see if they were complying with the target drug
02:39:04 24 checklist policy. Do you remember that?

02:39:06 25 **A** Yes.

02:39:06 1 **Q** Was this a presentation that your team sent out to the
02:39:12 2 field leaders to inform them about the results of that
02:39:16 3 audit?

02:39:16 4 **A** Yes.

02:39:16 5 **Q** Why did you do that?

02:39:17 6 **A** Well, because it wasn't a hundred percent. We wanted
02:39:22 7 all of our field leaders to know that, you know, we want
02:39:28 8 them to be looking for and checking against our policies and
02:39:37 9 understanding what the good faith dispensing and the target
02:39:43 10 good faith dispensing policies were, what the -- what things
02:39:45 11 that they should be looking for when they go into the stores
02:39:48 12 doing supervision. You know, it was another train the
02:39:56 13 trainer type webinar.

02:39:57 14 **Q** And just to get it back in your mind, there's the big
02:40:03 15 red arrow. It says results were unfavorable.

02:40:07 16 And then on the next page you talked about this 59.5
02:40:13 17 percent compliance rate for the "number of stores that
02:40:16 18 correctly had a completed target drug checklist attached to
02:40:21 19 the filled TD prescription hard copies."

02:40:24 20 Do you remember that?

02:40:25 21 **A** Yes.

02:40:25 22 **Q** And then just to get the other piece of this from this
02:40:27 23 deck, the next page, what it says is number of stores that
02:40:33 24 correctly had completed checklist attached to the refused TD
02:40:40 25 prescription hard copies," and it was a 75.7 percent

02:40:45 1 compliance rate.

02:40:47 2 Do you see that?

02:40:48 3 **A** Yes.

02:40:48 4 **Q** So for this one, and then we're going to go back and
02:40:50 5 I'm going to ask you some questions about the 59.5 percent
02:40:55 6 well.

02:40:55 7 But while we're here, what is being measured here, is
02:40:59 8 it whether the prescription was refused or is it whether
02:41:02 9 there was a checklist attached to the refusal?

02:41:04 10 **A** Whether there was a checklist attached to the refusal.

02:41:10 11 **Q** All right. Now I'm going to put a different document
02:41:12 12 on the screen, and it's Tab 9 in your binder.

02:41:19 13 Do you recognize that document? It's Exhibit 2606.

02:41:23 14 **A** Yes.

02:41:25 15 **Q** What is it?

02:41:25 16 **A** It's the results of this BCI walk that loss prevention
02:41:34 17 did.

02:41:34 18 **Q** You say it's the results. It says it's an executive
02:41:38 19 summary at the top.

02:41:39 20 Do you see that?

02:41:39 21 **A** Yes.

02:41:39 22 **Q** Is this document one that walks through in a more
02:41:43 23 detailed way the very specific granular results of the BCI
02:41:49 24 audit that you were reporting on to your team?

02:41:51 25 **A** Yes.

02:41:51 1 **Q** Not to your team. You were reporting on to the field?

02:41:57 2 **A** Yes.

02:41:58 3 **Q** I'll first direct your attention to -- and you can see

02:42:01 4 just walking through it there are questions and then it

02:42:04 5 shows what the results were for the different buckets of

02:42:07 6 stores.

02:42:07 7 Is that a fair characterization?

02:42:09 8 **A** Yes.

02:42:09 9 **Q** I'm going to focus on the ones that you put in the

02:42:14 10 presentation.

02:42:14 11 So the first one I'm going to focus on is question

02:42:17 12 number 5.

02:42:18 13 Do you see that at the bottom of the first page?

02:42:20 14 **A** Yes.

02:42:20 15 **Q** The question was: "When target drug prescriptions are

02:42:25 16 dispensed, pharmacy team members are responsible for

02:42:28 17 completing the target drug good faith dispensing TD GFD

02:42:33 18 checklist." And then it says, "Number of filled target drug

02:42:38 19 prescriptions that did not have a completed TD GFD checklist

02:42:43 20 attached."

02:42:44 21 Do you see that?

02:42:45 22 **A** Yes.

02:42:45 23 **Q** All right. Did these results that we see down here,

02:42:56 24 we see at the very bottom 11 or more equals 10 stores or 0.4

02:43:03 25 percent.

02:43:04 1 Do you see that?

02:43:04 2 **A** Yes.

02:43:04 3 **Q** Does that mean that only 10 stores out of the 2400

02:43:09 4 that were audited had filled more than 10 target drug

02:43:12 5 prescriptions without a completed checklist attached to it?

02:43:15 6 **A** Yes.

02:43:15 7 **Q** And that was just 0.4 percent of the audited stores?

02:43:20 8 **A** Yes.

02:43:20 9 **Q** And then right above that do you see where it says, "6

02:43:27 10 to 10 equals 133 stores or 5.5 percent"?

02:43:33 11 **A** Yes.

02:43:33 12 **Q** Does that mean that another 5.5 percent of the audited

02:43:39 13 stores had between six and ten checklists missing?

02:43:46 14 **A** Yes.

02:43:47 15 **Q** And if you add the 5.5 percent to the .4 percent, you

02:43:53 16 get 5.9 percent? Am I doing that math correctly?

02:43:57 17 **A** Yes.

02:43:57 18 **Q** Does that mean that 94.1 percent of the audited stores

02:44:03 19 had five or fewer checklists missing when loss prevention

02:44:08 20 conducted this audit?

02:44:08 21 **A** Yes.

02:44:10 22 **Q** That sounds pretty good. Were you happy with these

02:44:15 23 results?

02:44:15 24 **A** I would have liked to see a hundred percent

02:44:19 25 compliance, and, you know, that was part of the reason why

02:44:22 1 we, you know, shared all that information to field
02:44:28 2 leadership, that we expect a hundred percent compliance,
02:44:34 3 but, you know, I mean, 90 percent was very good, but I would
02:44:37 4 have liked to have seen a hundred percent.

02:44:39 5 **Q** The result that you put into your presentation to the
02:44:43 6 field, it didn't say great job, 94.1 percent; is that a fair
02:44:48 7 statement?

02:44:48 8 **A** Fair.

02:44:49 9 **Q** Now I'd like to ask you about -- and is that
02:44:55 10 because -- why didn't you say great job, 94.1 percent?

02:44:58 11 **A** Because there were instances where they did not follow
02:45:02 12 the policy, and we want them to follow the policy.

02:45:05 13 **Q** You want them to be perfect?

02:45:06 14 **A** Yes.

02:45:06 15 **Q** All right. Now, if you'd turn to the next page, I
02:45:12 16 want to ask you about question number 7. It says, "If the
02:45:21 17 pharmacist determines a TD prescription does not meet GFD
02:45:26 18 requirements, a copy of the refused prescription and
02:45:28 19 completed TD GFD checklist must be in the refusal file.
02:45:33 20 After reviewing the refusal California file folder for
02:45:37 21 calendar 2015, how many refused TD prescriptions lacked a
02:45:41 22 completed TD GFD checklist?"

02:45:45 23 Do you see that?

02:45:46 24 **A** Yes.

02:45:46 25 **Q** And do you see that the answer is zero for 1820

02:45:56 1 stores?

02:45:56 2 **A** Yes.

02:45:56 3 **Q** So those are the stores that weren't missing any
02:46:01 4 checklists?

02:46:03 5 **A** Yeah, based on the number 7 above, yes.

02:46:09 6 **Q** Okay. All right. And we saw how you reported this to
02:46:14 7 your team to the field in the presentation that the
02:46:19 8 plaintiffs' lawyer showed you earlier today; is that fair?

02:46:25 9 **A** Yes.

02:46:25 10 **Q** I think I can do this one quickly before our break.

02:46:54 11 Take a look, if you would, Ms. Polster, at Tab 12, and
02:46:58 12 let me know if you recognize that document.

02:46:59 13 **A** Yes.

02:46:59 14 **Q** What is the document behind Tab 12?

02:47:01 15 **A** It is our 2020 good faith dispensing policy.

02:47:07 16 **Q** And is that what I have on the screen?

02:47:09 17 **A** Yes.

02:47:09 18 **Q** This is the last one of these I'm going to do.

02:47:11 19 Would you agree with me that the 2020 good faith
02:47:14 20 dispensing policy is even more detailed and it's even longer
02:47:19 21 than the previous policies we've looked at?

02:47:20 22 **A** Yes.

02:47:21 23 **Q** Is it fair to say that Walgreens has continued to
02:47:24 24 enhance its good faith dispensing policy to identify red
02:47:30 25 flags of potential diversion throughout the time you've been

02:47:32 1 at Walgreens?

02:47:33 2 **A** Yes.

02:47:33 3 **Q** Does Walgreens train its pharmacists at least annually
02:47:37 4 on good faith dispensing today?

02:47:39 5 **A** Yes.

02:47:39 6 **Q** All right. You have behind you, I believe they're in
02:47:45 7 a Redweld, a group of other good faith dispensing policies
02:47:50 8 and target drug good faith dispensing policies, but what I'd
02:47:54 9 like for you to do is look at the documents in that Redweld
02:47:57 10 and tell me if that's what those are.

02:48:13 11 **A** Yes, they're the paper copies of the good faith
02:48:19 12 dispensing policies.

02:48:19 13 **Q** Okay.

02:48:25 14 MR. LANIER: Your Honor, I think I'm going to
02:48:26 15 move to a longer new section. This might be a good time to
02:48:29 16 take our afternoon break.

02:48:30 17 THE COURT: Very good. Then we'll take our
02:48:32 18 mid afternoon break. Usual admonitions. 15 minutes, then
02:48:36 19 we'll pick up with more of Ms. Polster's testimony.

02:49:15 20 (Recess taken at 2:49 p.m.)

03:06:50 21 (The jury is present at 3:06 p.m.)

03:06:51 22 THE COURT: Please be seated.

03:06:52 23 Ms. Polster, you're still under oath.

03:06:54 24 Ms. Swift, you may continue.

03:06:56 25 MS. SWIFT: Thank you, Your Honor.

03:06:57 1 Mr. Pitts, if I could trouble you for the ELMO, I'd
03:07:02 2 appreciate it.

03:07:04 3 Welcome back, Ms. Polster.

03:07:05 4 THE WITNESS: Thank you.

03:07:07 5 MS. SWIFT: Ladies and gentlemen of the jury.

03:07:08 6 BY MS. SWIFT:

03:07:08 7 **Q** I want to go back to something I was asking you about
03:07:11 8 before the break just to make sure it's really clear. Let's
03:07:14 9 see if we can do this.

03:07:16 10 Do you remember this page of the train the trainer
03:07:20 11 presentation on compliance with the target drug checklist?

03:07:25 12 **A** Yes.

03:07:26 13 **Q** And it shows a 59.5 percent compliance rate.

03:07:29 14 Was that perfect compliance?

03:07:34 15 **A** Yeah, 59.5 percent of the stores had perfect
03:07:38 16 compliance.

03:07:39 17 **Q** So just I want to make really sure that that's clear
03:07:43 18 what that means. And I'm going to try to show the -- so
03:07:47 19 this is the other document about the BCI, something we are
03:07:50 20 looking at before.

03:07:50 21 Do you remember this one?

03:07:51 22 **A** Yes.

03:07:51 23 **Q** And I've circled the number or the question that
03:07:54 24 relates to this particular question in your train the
03:07:56 25 trainer presentation, and you can see the 59.5 percent right

03:08:00 1 there.

03:08:00 2 And that corresponds to this 59.5 percent compliance

03:08:05 3 rate right here, correct?

03:08:07 4 **A** Correct.

03:08:07 5 **Q** Is what that is saying that those stores, that 59.5

03:08:15 6 percent, had every single checklist that they were supposed

03:08:18 7 to have completed?

03:08:21 8 **A** Correct.

03:08:21 9 **Q** The 94.1 percent that we were talking about before, do

03:08:24 10 you remember that number?

03:08:25 11 **A** Yes.

03:08:26 12 **Q** Is that the number of stores that had five checklists

03:08:31 13 missing or even fewer than that?

03:08:33 14 **A** Yes.

03:08:33 15 **Q** So is it fair to say for 94.1 percent of the stores,

03:08:46 16 they were doing a pretty good job?

03:08:47 17 **A** Yes.

03:08:47 18 **Q** All right. The other number we talked about from this

03:08:52 19 presentation that went out to your field leaders was the

03:08:58 20 75.7.

03:08:59 21 Do you see that?

03:09:00 22 **A** Yes.

03:09:00 23 **Q** This is the number of stores that correctly had

03:09:03 24 completed target drug good faith checklists attached to the

03:09:07 25 refusals.

03:09:08 1 Is that right?

03:09:09 2 **A** Correct.

03:09:09 3 **Q** And just to go back to it in the summary that gives
03:09:13 4 the details of the results so we can see it together -- I
03:09:17 5 don't know if I can put it on the screen together.

03:09:29 6 It's 1820 stores, does that correspond to this number
03:09:33 7 as well?

03:09:33 8 **A** Yes, but let me read that question above it.

03:09:45 9 Yeah, that's correct.

03:09:46 10 **Q** So the question number 7 is asking, "If the pharmacist
03:09:50 11 determines a target drug prescription does not meet GFD
03:09:54 12 requirements, a copy of the refused prescription and
03:09:56 13 completed checklist -- completed TD GFD checklist must be in
03:10:04 14 the refusal file. After reviewing the refusal California
03:10:08 15 file folder for calendar 2015, how many refused
03:10:12 16 prescriptions lacked a completed TD GFD checklist?"

03:10:18 17 Did I get that right?

03:10:19 18 **A** Yes.

03:10:20 19 **Q** And the answer for that was that 1820 stores weren't
03:10:23 20 missing a single checklist attached to a refusal, correct?

03:10:27 21 **A** Correct.

03:10:39 22 **Q** Ms. Polster, have you had an opportunity to see
03:10:41 23 refused prescriptions at Walgreens stores over your career?

03:10:45 24 **A** Yes.

03:10:45 25 **Q** Are there a number of places at Walgreens, whether in

03:10:54 1 the -- like, physically in the store or in the computer
03:10:56 2 system where a pharmacist can make a note that a
03:11:01 3 prescription has been refused?

03:11:02 4 **A** Yes.

03:11:02 5 **Q** Is one place in a physical folder in the store?

03:11:09 6 **A** Yes.

03:11:09 7 **Q** It's like a manila folder that folds over the
03:11:14 8 prescriptions?

03:11:14 9 **A** Yes.

03:11:14 10 **Q** And the pharmacists maintain the hard copy refused
03:11:19 11 prescriptions in that folder in the store, there's that one
03:11:24 12 place they can go to look if they want to see whether or not
03:11:27 13 a prescription has been refused?

03:11:28 14 **A** Yes, they maintain a copy of the hard copy.

03:11:31 15 **Q** Are there places in the computer system where a
03:11:34 16 pharmacist can document that a prescription for a patient
03:11:36 17 has been refused?

03:11:37 18 **A** Yes.

03:11:37 19 **Q** Is one of those places in the patient comment field?

03:11:42 20 **A** Yes.

03:11:42 21 **Q** Are there other places within the computer system
03:11:46 22 where a patient can make a note about that?

03:11:48 23 **A** Where a pharmacist could make a note about the
03:11:51 24 patient, yes.

03:11:51 25 **Q** And about whether a prescription has been refused?

03:11:54 1 **A** Yes.

03:11:54 2 **Q** Can pharmacists also put other information that they
03:12:01 3 deem relevant and important into the patient comment field?

03:12:04 4 **A** Yes.

03:12:04 5 **Q** Can pharmacists put notes on things they deem relevant
03:12:09 6 to a particular prescription in other fields in the
03:12:14 7 Walgreens computer system?

03:12:15 8 **A** Yes.

03:12:16 9 **Q** Is there a field called the annotation field where you
03:12:18 10 can do that?

03:12:19 11 **A** Yes.

03:12:19 12 **Q** Are there other -- is there a comment field for DUR or
03:12:28 13 drug utilization review comments where a pharmacist can do
03:12:33 14 that?

03:12:33 15 MR. WEINBERGER: Objection. I mean, I --

03:12:34 16 THE COURT: Sustained.

03:12:37 17 **Q** All right. Well, you said a moment ago that refusals
03:12:41 18 are maintained in hard copy at the store, right?

03:12:44 19 **A** Yes.

03:12:44 20 **Q** Because of the different places where a pharmacist can
03:12:51 21 maintain information about a refused prescription, is it a
03:12:56 22 concern to you if a pharmacist deems it appropriate to
03:13:01 23 delete portions of a comment field about a refusal?

03:13:05 24 MR. WEINBERGER: Objection.

03:13:06 25 THE COURT: Overruled.

03:13:14 1 **A** It would be a concern for me if the most recent
03:13:19 2 prescription that is in front of the pharmacist at the time
03:13:22 3 of refusing, if that information is not in the field where
03:13:30 4 another pharmacist could see that that prescription was
03:13:34 5 indeed refused, that would be a concern.

03:13:36 6 Q Do you have any reason to believe that that is
03:13:39 7 something that happens on any kind of regular basis at
03:13:44 8 Walgreens?

03:13:45 9 MR. WEINBERGER: Objection.

03:13:45 10 THE COURT: Sustained.

03:13:52 11 Q I think you just said if the most recent information
03:13:54 12 was removed from a comment field, that might be a concern.

03:13:58 13 Would it be a concern to you if older information is
03:14:02 14 removed from a comment field?

03:14:04 15 MR. WEINBERGER: Objection.

03:14:11 16 THE COURT: Sustained.

03:14:14 17 Q All right. I'd like you to take a look at the
03:14:16 18 document behind -- well, before I get to that, have you had
03:14:20 19 an opportunity to review the refusal files for the Walgreens
03:14:25 20 stores in Lake and Trumbull County?

03:14:27 21 | A Yes.

03:14:27 22 Q Do you have an understanding of how many stores are in
03:14:31 23 Lake and Trumbull County, roughly speaking?

03:14:33 24 **A** I'm guessing maybe 12. 12, I think.

03:14:39 25 Q And if you'll turn to Tab 6 in your binder, let me

03:14:46 1 know if you recognize what that is.

03:14:53 2 **A** Yes, I -- it's a copy of a target drug good faith
03:15:00 3 dispensing checklist for a refused prescription.

03:15:02 4 **Q** Have you seen this refused prescription and the
03:15:06 5 attached checklist before?

03:15:07 6 **A** Yes.

03:15:07 7 **Q** Can you tell whether the refusal and the attached
03:15:14 8 checklist, are those from a store in Ohio?

03:15:18 9 **A** Yes.

03:15:18 10 **Q** How can you tell that?

03:15:19 11 **A** It has the Ohio prescription drug monitoring report,
03:15:26 12 and it has store numbers on here somewhere.

03:15:37 13 **Q** Did you say it has the store numbers on there?

03:15:40 14 **A** Yeah.

03:15:40 15 **Q** Where does it have the store number?

03:15:42 16 **A** Well, maybe it doesn't have an exact store number.
03:15:58 17 I'm sorry.

03:15:59 18 **Q** Take a look at the third page at the bottom.

03:16:01 19 Do you see a store number and an address?

03:16:04 20 **A** On page 3?

03:16:05 21 **Q** Yes. It says 2604.899 at the bottom of it.

03:16:19 22 **A** Okay.

03:16:19 23 **Q** Do you see that?

03:16:20 24 **A** Yeah.

03:16:21 25 **Q** What's the address of that Walgreens?

03:16:22 1 **A** I want to make sure that I'm looking at the right line
03:16:32 2 here.

03:16:33 3 **Q** It's the -- do you see the heading towards the bottom
03:16:36 4 of the page that says, "Pharmacies that dispensed
03:16:41 5 prescriptions listed"?

03:16:42 6 **A** Yes.

03:16:42 7 **Q** And the bottom one listed is W-G5549?

03:16:45 8 **A** Yes.

03:16:45 9 **Q** What's the address of that Walgreens store?

03:16:47 10 **A** 804 West Market Street, Warren, Ohio.

03:16:52 11 **Q** Is the document that I've got on the screen the same
03:17:14 12 one that you're looking at, Ms. Polster?

03:17:16 13 **A** Yes.

03:17:16 14 **Q** And you recognize this as a Walgreens refusal to fill?

03:17:22 15 **A** Yes.

03:17:22 16 **Q** How can you tell this prescription has been refused?

03:17:25 17 **A** Down at the bottom where it has pharmacist's
03:17:32 18 signature, there's a box for refused and their signature.

03:17:35 19 **Q** Is that what you're talking about right there, that
03:17:37 20 little box that says "refused"?

03:17:40 21 **A** Yes.

03:17:41 22 **Q** All right. I'd like to direct your attention to the
03:17:50 23 notes at the bottom.

03:17:55 24 Can you read that for us, please?

03:17:57 25 **A** "Per prescription drug monitoring program, the patient

03:18:02 1 is getting 360 methadone at Overholt's Pharmacy. Both are
03:18:09 2 short-acting narcotics, and I don't feel comfortable filling
03:18:12 3 this prescription while X is getting the methadone.

03:18:21 4 **Q** All right. And that's a note that is at the bottom of
03:18:24 5 the page of the checklist.

03:18:26 6 Is the checklist also filled out?

03:18:28 7 **A** Yes.

03:18:29 8 **Q** And what do you see on the second and third pages of
03:18:34 9 this document?

03:18:35 10 **A** This is a copy of the Ohio OARRS prescription drug
03:18:43 11 monitoring program for this patient.

03:18:50 12 **Q** Do you see that on pages 2 and 3 of this refusal, the
03:18:53 13 OARRS report, most of the prescriptions listed are from a
03:18:59 14 pharmacy called Overholt's?

03:19:04 15 **A** Yes.

03:19:06 16 MR. WEINBERGER: Objection, Your Honor.

03:19:07 17 THE COURT: Overruled.

03:19:08 18 MR. WEINBERGER: Can we be heard at side bar?

03:19:11 19 (At side bar at 3:19 p.m.)

03:19:34 20 MR. WEINBERGER: Your Honor, you previously
03:19:37 21 ruled that the PDMP report in the Winland investigation
03:19:44 22 was -- could not be used in terms of individual
03:19:46 23 prescriptions, so consistent with that ruling, where they're
03:19:54 24 going into an individual script to defend the case --

03:19:59 25 MS. SWIFT: Your Honor, we disclosed this a

03:20:01 1 year ago, and we have always made it very clear that we were
03:20:04 2 going to defend our case prescription by prescription if
03:20:07 3 opposed, and you've always said that we were entitled to do
03:20:12 4 that.

03:20:12 5 MR. WEINBERGER: Well, then we should have
03:20:14 6 been entitled to go into the Winland PDMP report in detail.

03:20:19 7 MS. SWIFT: That was a very different
03:20:20 8 situation. That stuff had not been disclosed. We had a
03:20:23 9 specific interrogatory, Number 25, on it. It was not
03:20:26 10 disclosed in response to that interrogatory. We asked for
03:20:28 11 it and plaintiffs did not get it to us.

03:20:29 12 I'll withdraw the PDMP details.

03:20:35 13 MR. LANIER: Judge --

03:20:36 14 THE COURT: Look, I mean, if the defendants
03:20:38 15 are going to defend this case prescription by prescription
03:20:42 16 on redirect, I'll let the plaintiffs bring in prescriptions,
03:20:45 17 all right?

03:20:46 18 I'm not limiting how anyone defends the case, but if
03:20:49 19 you defend it this way, they've got rebuttal and they can
03:20:51 20 start bringing in individual prescriptions, Ms. Swift. So
03:20:55 21 you --

03:20:56 22 MS. SWIFT: I'll withdraw it, Your Honor.

03:20:57 23 THE COURT: I'm not telling you to withdraw
03:20:58 24 it.

03:20:58 25 MR. LANIER: And that's a little late after

03:21:00 1 she's already displayed it. I'd like the record to reflect
03:21:02 2 she displayed it for a minute and a half in front of the
03:21:05 3 jury and questioned on it.

03:21:07 4 THE COURT: The point is they can bring out
03:21:09 5 the fact that sometimes Walgreens refuses prescriptions,
03:21:13 6 okay, because there's been a lot of testimony on it. I
03:21:16 7 think it's relevant for that basis. But if we're going to
03:21:18 8 start going into individual ones, then the plaintiffs can
03:21:21 9 bring in individual prescriptions in rebuttal.

03:21:32 10 (In open court at 3:21 p.m.)

03:21:44 11 BY MS. SWIFT:

03:21:45 12 Q Ms. Polster, have you had an opportunity -- I believe
03:21:47 13 you said you did already, but I'll ask it again just to make
03:21:51 14 sure.

03:21:51 15 Have you had an opportunity to review other refusals
03:21:54 16 from the Walgreens stores in Lake and Trumbull County?

03:21:57 17 A Yes.

03:21:57 18 Q And I believe you have a box behind you. Can you
03:21:59 19 please, if you would, take a look at that box and let me
03:22:02 20 know if those are the refusals from the Lake and Trumbull
03:22:06 21 County stores that you have reviewed?

03:22:07 22 MR. LANIER: Could we have a copy of those?

03:22:09 23 MS. SWIFT: I believe so, yes, sir.

03:22:41 24 A There's a lot of papers in here. I do recognize some
03:22:45 25 of the store numbers, and they are copies of refusals.

03:22:54 1 **Q** All right. New topic.

03:22:56 2 What is IntercomPlus?

03:23:01 3 **A** It's our prescription dispensing computer system.

03:23:04 4 **Q** How long has IntercomPlus been in place at Walgreens?

03:23:07 5 **A** We've had a computer system since 1984, and the newest

03:23:15 6 version, called IntercomPlus, started in 1997 with various

03:23:22 7 enhancements over the years.

03:23:23 8 **Q** Does IntercomPlus -- so just to make sure this is

03:23:27 9 clear, explain for the jury, if you would, please, how a

03:23:34 10 pharmacist at Walgreens uses IntercomPlus?

03:23:38 11 **A** So IntercomPlus stores the information for a specific

03:23:42 12 prescription that is filled, and so all the data entry for

03:23:48 13 the prescription, an image of the prescription for that

03:23:51 14 patient, it has a record of drug interactions, it has a

03:23:59 15 record of if the prescription was paid for by cash or

03:24:03 16 insurance. It basically has all the information stored in

03:24:10 17 it for all filled prescriptions, and any annotations or

03:24:16 18 notes, allergies, health conditions that are relevant for a

03:24:20 19 patient.

03:24:20 20 **Q** If you see a pharmacist in a pharmacy, like when you

03:24:25 21 go into the Walgreens you see a pharmacist behind the

03:24:28 22 counter working on a computer, are they working on

03:24:30 23 IntercomPlus?

03:24:31 24 **A** Yes.

03:24:31 25 **Q** Okay. Does IntercomPlus help pharmacists at Walgreens

03:24:36 1 identify concerns with prescriptions?

03:24:38 2 **A** Yes.

03:24:39 3 MR. WEINBERGER: Objection.

03:24:40 4 **Q** Can you --

03:24:41 5 THE COURT: Hold it.

03:24:44 6 Overruled.

03:24:45 7 **Q** Can you provide an example?

03:24:47 8 **A** Yes. A drug-drug interaction would be alerted the
03:24:56 9 pharmacist. A drug allergy or a drug health condition could
03:25:00 10 be alerted the pharmacist.

03:25:01 11 **Q** Is there a large amount of documented information in
03:25:04 12 IntercomPlus for every prescription that is filled at
03:25:07 13 Walgreens?

03:25:08 14 **A** Yes.

03:25:08 15 MR. WEINBERGER: Objection.

03:25:09 16 THE COURT: Overruled.

03:25:09 17 **Q** Does IntercomPlus include the store number and ZIP
03:25:15 18 code of the pharmacy?

03:25:15 19 **A** Yes.

03:25:15 20 **Q** Does IntercomPlus include the prescription number and
03:25:19 21 what date it's being filled?

03:25:22 22 **A** Yes.

03:25:23 23 **Q** Does IntercomPlus show the pharmacist whether a
03:25:26 24 prescription is new or a refill?

03:25:29 25 **A** Yes.

03:25:29 1 **Q** Does IntercomPlus include a product description for
03:25:34 2 the medication?

03:25:34 3 **A** Yes.

03:25:35 4 **Q** Does IntercomPlus include the quantity dispensed?

03:25:39 5 **A** Yes.

03:25:39 6 **Q** Does IntercomPlus include how many days of supply a
03:25:43 7 prescription is for?

03:25:44 8 **A** Yes.

03:25:44 9 **Q** I think you already said this, but does IntercomPlus
03:25:49 10 indicate whether the patient paid for a prescription with
03:25:53 11 cash or insurance?

03:25:54 12 **A** Yes.

03:25:54 13 **Q** Is all of that available to the pharmacist at the
03:26:00 14 counter when they are filling a prescription?

03:26:02 15 **A** Yes.

03:26:02 16 **Q** Does IntercomPlus include the doctor's name?

03:26:05 17 **A** Yes.

03:26:05 18 **Q** Does it include the doctor's address?

03:26:09 19 **A** Yes.

03:26:09 20 **Q** Does it include the doctor's DEA number?

03:26:11 21 **A** Yes.

03:26:11 22 **Q** What is the doctor's DEA number? Why is that person?

03:26:14 23 **A** The DEA will assign a DEA number to a specific
03:26:22 24 practitioner based on the schedule of prescriptions that a
03:26:29 25 doctor is allowed to prescribe. So a doctor applies for a

03:26:33 1 DEA number, and the DEA would grant the privilege of writing
03:26:40 2 a prescription for a controlled substance based on that
03:26:45 3 application.

03:26:45 4 **Q** If a doctor is writing a prescription in Florida but
03:26:51 5 the patient fills it in Ohio, account pharmacist see that in
03:26:56 6 IntercomPlus?

03:26:56 7 **A** Yes.

03:26:56 8 **Q** Can the pharmacist see the patient's birth date, the
03:27:01 9 patient's sex, the patient's address, and the patient's ZIP
03:27:04 10 code in IntercomPlus?

03:27:05 11 **A** Yes.

03:27:05 12 **Q** Is all of that information provided to Walgreens
03:27:12 13 pharmacists to use while they're deciding whether to fill a
03:27:16 14 prescription?

03:27:16 15 **A** Yes.

03:27:16 16 **Q** And I think you said this already before, but just to
03:27:24 17 make sure, we talked about the hard copy target drug
03:27:28 18 checklists where a pharmacist can make a note.

03:27:30 19 Are there many places in IntercomPlus where a
03:27:33 20 pharmacist can make a note as well?

03:27:34 21 **A** Yes.

03:27:35 22 **Q** When a pharmacist is filling a prescription at the
03:27:53 23 counter, can the pharmacist see earlier prescriptions that
03:27:57 24 that patient who is in front of them has filled at
03:27:59 25 Walgreens?

03:27:59 1 **A** Yes.

03:28:00 2 **Q** How far back would say pharmacist see if looking at a

03:28:07 3 patient's prescription history, how far back in time?

03:28:10 4 **A** 18 months.

03:28:11 5 **Q** Does a pharmacist typically need to look back any

03:28:15 6 further than that?

03:28:15 7 **A** Not generally.

03:28:16 8 **Q** Can they if they need to?

03:28:18 9 **A** Yes, they could request information from the custodian

03:28:21 10 of records.

03:28:23 11 **Q** All right. You testified earlier today that for a

03:28:29 12 period of time the target drug checklist was in paper.

03:28:33 13 Is the target drug checklist that the pharmacist fills

03:28:36 14 out for target drugs, is it still in paper today or is it

03:28:41 15 electronic or how is that done today?

03:28:42 16 **A** We use an electronic format.

03:28:46 17 **Q** And explain to the jury what that means when for the

03:28:50 18 pharmacist who's standing at the counter.

03:28:53 19 **A** So IntercomPlus will trigger alerts or questions that

03:28:59 20 the pharmacist has to resolve based on the prescription that

03:29:04 21 they're filling and answer accordingly that they resolved

03:29:11 22 those steps while they're filling the prescription.

03:29:14 23 **Q** And just to make sure it's clear, several of the

03:29:17 24 alerts that are in IntercomPlus today have been in

03:29:22 25 IntercomPlus since long before the target drug checklist

03:29:27 1 became electronic; is that a true statement?

03:29:31 2 **A** Yes.

03:29:31 3 **Q** What did the electronic version of the checklist add
03:29:37 4 to IntercomPlus? What's done electronically now in terms of
03:29:42 5 the alerts that pop up?

03:29:43 6 **A** It automatically calculates the MME of the
03:29:49 7 prescription. It helps calculate the distance so the
03:29:57 8 pharmacist doesn't have to look it up.

03:30:01 9 **Q** Does it flag early refills?

03:30:03 10 **A** It does flag early refills.

03:30:05 11 **Q** Does the electronic version of the checklist force the
03:30:09 12 pharmacist to complete the checklist before the prescription
03:30:12 13 can be filled?

03:30:12 14 **A** Yes.

03:30:12 15 **Q** Remind the jury, if you would, how long the checklist
03:30:18 16 has been electronic.

03:30:19 17 **A** The end of 2019.

03:30:23 18 **Q** Is it fair to say that the pharmacist could do all of
03:30:26 19 the things that are now electronic, they could do those
03:30:29 20 things manually before?

03:30:31 21 **A** Yes.

03:30:31 22 **Q** Does the checklist make it easier for them to do that?

03:30:34 23 **A** Yes.

03:30:34 24 **Q** Does it make it faster?

03:30:40 25 **A** Yes.

03:30:40 1 **Q** Does Walgreens make use of the prescription data that
03:31:02 2 it has to prevent the diversion of opioids?

03:31:09 3 **A** Sorry, can you clarify that for me?

03:31:11 4 **Q** I'd be happy to. We'll come back to that.

03:31:15 5 Before I come back to that though, does Walgreens
03:31:19 6 provide other tools aside from IntercomPlus, like databases
03:31:24 7 of clinical information for pharmacists to use?

03:31:27 8 **A** Yes.

03:31:27 9 **Q** What kind of databases does Walgreens provide to its
03:31:30 10 pharmacists?

03:31:30 11 **A** They have access to the CDC and the DEA websites, they
03:31:36 12 have access to clinical references such as clinical
03:31:41 13 pharmacology, Lexicomp, and Drugs Facts and Comparisons that
03:31:47 14 they can look up specific information on a drug that could
03:31:52 15 go all the way down to the detail of the mechanism of action
03:31:55 16 or how long the half-life is or whatever they would need
03:31:59 17 extra in filling the prescription.

03:32:01 18 **Q** Are those paid services that Walgreens provides for
03:32:04 19 its pharmacists?

03:32:06 20 **A** The drug references are, yes.

03:32:09 21 **Q** Does Walgreens also have an internal complaint hotline
03:32:13 22 for employees?

03:32:15 23 **A** Yes, we do.

03:32:17 24 **Q** You were asked questions yesterday about a pharmacist
03:32:19 25 in Long Beach, California, who made some pretty serious

03:32:26 1 complaints about the filling of prescriptions in his store.

03:32:32 2 Do you remember those questions?

03:32:33 3 **A** Yes.

03:32:36 4 **Q** He complained about the way two store managers had

03:32:39 5 handled a prescription he thought should be refused.

03:32:41 6 Do you remember that?

03:32:41 7 **A** Yes.

03:32:41 8 **Q** I'd like you to take a look at the document lined Tab

03:32:44 9 19 of your binder.

03:32:55 10 **A** Okay.

03:32:58 11 **Q** Do you recognize this document as the investigation

03:33:00 12 file for that pharmacist?

03:33:02 13 **A** I do.

03:33:02 14 **Q** Have you had a chance to review the investigation

03:33:09 15 file?

03:33:09 16 **A** Yes, at a high level.

03:33:12 17 **Q** And you can see on the first page -- well, let me just

03:33:16 18 put it on the screen so we can follow along.

03:33:19 19 You can see on the first page of the investigation

03:33:30 20 file in the third bullet it says this case is closed?

03:33:36 21 **A** Yes.

03:33:36 22 **Q** And just below that it says that the status is

03:33:39 23 resolved.

03:33:39 24 Do you see that?

03:33:40 25 **A** Yes.

03:33:41 1 Q And it says the issue type is an unfair job action.

03:33:50 2 | Do you see that?

03:33:54 3 | A Yes.

03:33:54 4 Q And I won't show it on the screen, but can you see on
03:33:57 5 the third page of the investigation file the pharmacist's
03:34:02 6 name is there and it says that he works at a store in Long
03:34:07 7 Beach.

03:34:07 8 | Do you see that?

03:34:08 9 | A Yes.

03:34:08 10 Q Is this the same pharmacist who made the complaint
03:34:11 11 that you were just asked about yesterday?

03:34:12 12 | **A** Yes.

03:34:13 13 Q Did you have an opportunity to review this
03:34:15 14 investigation file and determine whether the complaint was
03:34:20 15 addressed thoroughly?

03:34:21 16 | A Yes.

03:34:21 17 Q And what did you conclude about that?

03:34:23 18 **A** I felt it was thoroughly investigated from my point of view.
03:34:31 19

03:34:31 20 Who handles complaints like this at Walgreens?

03:34:34 21 **A** Our compliance department and our employee relations
03:34:38 22 department, and in some cases our HR department.

03:34:44 23 Q Is it typical for a compliant like this one for
03:34:47 24 multiple departments to get involved?

03:34:48 25 | **A** Yes.

03:34:48 1 **Q** Is it typical for a complaint like this one for the
03:34:52 2 investigation to take, you know, several months?

03:34:56 3 **A** Yes.

03:34:56 4 **Q** Do you know from your review of the investigation file
03:35:01 5 whether the investigators in this case took witness
03:35:05 6 statements?

03:35:06 7 **A** Yes.

03:35:10 8 **Q** And did they?

03:35:10 9 **A** Yes.

03:35:10 10 **Q** Do you know from your review of this investigation
03:35:12 11 file whether the investigation led to retraining in the
03:35:18 12 local area where the two store managers worked?

03:35:23 13 **A** Yes.

03:35:25 14 **Q** When a complaint like this is made by an employee at
03:35:29 15 Walgreens, does Walgreens take it very seriously?

03:35:32 16 **A** Yes.

03:35:32 17 **Q** Do you believe based on your review of the
03:35:36 18 investigation file that Walgreens did take this complaint
03:35:39 19 very seriously?

03:35:40 20 **A** Yes.

03:35:40 21 **Q** If you look at page 9 of the investigation file. I'll
03:36:24 22 put it on the screen over here.

03:36:25 23 Do you see the description that reads that "JSB," I
03:36:44 24 believe you can tell from the investigation file that that's
03:36:45 25 Janeen Burrel?

03:36:47 1 **A** Yes.

03:36:47 2 **Q** It says, "JSB participated in a conference call with

03:36:50 3 Scott Jonkman, Eric Stahmann, and Lisa Domenick."

03:36:54 4 Do you know who those people are?

03:36:55 5 **A** I know who Scott Jonkman is and Eric Stahmann. I am

03:36:59 6 not familiar with Lisa Domenick or Janeen Burrel.

03:37:02 7 **Q** Who is Scott Jonkman?

03:37:04 8 **A** Scott Jonkman works in our compliance investigation

03:37:07 9 group.

03:37:10 10 **Q** Do you see that it says, "Mr. Jonkman wanted to

03:37:13 11 clarify that he believes the managers' handling of the issue

03:37:15 12 to be an isolated incident and not a systemic matter"?

03:37:19 13 **A** I do.

03:37:19 14 **Q** Do you remember questions that you were asked earlier,

03:37:41 15 I believe today and yesterday, about something called a

03:37:46 16 nondispensing report?

03:37:47 17 **A** Yes.

03:37:48 18 **Q** I'd like you to pull out the document that went along

03:37:50 19 with those questions. It's Plaintiffs' Exhibit 19607.

03:38:05 20 I've got it on the screen if that's easier. It's up

03:38:08 21 to you if you want to find the hard copy.

03:38:10 22 **A** I found it.

03:38:11 23 **Q** Do you see that I've got the e-mail on the screen from

03:38:15 24 you to -- there's Eric Stahmann again.

03:38:20 25 He's on your team; is that right?

03:38:21 1 **A** Yes.

03:38:21 2 **Q** Chris Dymon and Patty Daugherty, are they both on your

03:38:27 3 team as well?

03:38:28 4 **A** Yes.

03:38:28 5 **Q** And so is Ed Bratton?

03:38:41 6 **A** Yes.

03:38:41 7 **Q** All right. The subject line is "Nondispensing

03:38:41 8 report."

03:38:41 9 Do you see that?

03:38:41 10 **A** Yes.

03:38:41 11 **Q** Your e-mail to your team about this report said, "The

03:38:48 12 intent is to give visibility into whether or not we have

03:38:52 13 pharmacists that just won't fill a controlled med or maybe

03:38:59 14 are selective about filling them."

03:39:01 15 What did you mean by that?

03:39:03 16 **A** So we wanted to make sure when a pharmacist is

03:39:12 17 presented with a prescription, that they don't just pick and

03:39:15 18 choose which ones they decide to fill because it's easy.

03:39:20 19 That it's a, you know, noncontrolled prescription, you know,

03:39:23 20 it's fine, I'm going to fill it. You know, that -- you

03:39:26 21 know, if a controlled substance prescription comes in and

03:39:30 22 the patient's in front of them, that they should take that

03:39:34 23 situation and that patient and the prescription as it comes.

03:39:38 24 And they can't just willy-nilly not fill the

03:39:43 25 prescription because they don't want to take the steps to do

03:39:45 1 their due diligence.

03:39:47 2 **Q** I'd like you to explain to the jury, because this is
03:39:49 3 important, were you trying to pressure pharmacists to fill
03:39:54 4 more controlled substance prescriptions?

03:39:57 5 **A** No.

03:39:57 6 **Q** Who received the nondispensing report at Walgreens?

03:40:01 7 **A** Just field leadership, above district managers.

03:40:04 8 **Q** Why did field leadership above district managers
03:40:08 9 receive this report and not other people?

03:40:11 10 **A** It was -- well, lower than that didn't need it, and it
03:40:17 11 was meant as an all-encompassing report looking at many
03:40:23 12 different things around controlled substances for the stores
03:40:27 13 in their market.

03:40:27 14 **Q** Did the field leaders, were they supposed to give this
03:40:32 15 nondispensing report to the pharmacists and tell them you
03:40:35 16 need to fill more prescriptions?

03:40:37 17 **A** No, that was not the intent.

03:40:38 18 **Q** Did the field leaders provide the pharmacists with
03:40:41 19 this report at all?

03:40:44 20 **A** No.

03:40:45 21 **Q** Is there anything inappropriate about having district
03:40:52 22 managers or other field leaders coaching pharmacists on good
03:40:57 23 faith dispensing?

03:40:57 24 **A** No.

03:40:57 25 **Q** And I'd like you to -- I'm sorry, I stepped on your

03:41:00 1 answer. Let me ask it again. I apologize.

03:41:02 2 Is there anything inappropriate about having district
03:41:07 3 managers or other field leaders coaching pharmacists on good
03:41:12 4 faith dispensing?

03:41:12 5 **A** No.

03:41:12 6 **Q** Even if they're not a pharmacist?

03:41:16 7 **A** Correct.

03:41:16 8 **Q** Why not?

03:41:17 9 **A** Well, when they're coaching around good faith
03:41:20 10 dispensing, they're not questioning whether or not that
03:41:22 11 pharmacist did or didn't fill the prescription. They're --
03:41:28 12 in some cases they're coaching to understand why. In some
03:41:31 13 cases a patient will complain if a pharmacist doesn't fill
03:41:35 14 their prescription.

03:41:36 15 And in some cases, the district manager has to handle
03:41:40 16 that complaint, and they may call or go into a store and get
03:41:45 17 more details around it so that they can talk to the patient
03:41:48 18 and let them know the reason behind why the prescription
03:41:52 19 wasn't filled.

03:41:53 20 Sometimes it's remember we're asking you to follow a
03:41:56 21 policy, we need you to fill out the target drug good faith
03:42:02 22 dispensing checklist, did you know that that checklist was
03:42:04 23 available, did you know that it's required. That would be
03:42:08 24 something appropriate for the leader to follow up on.

03:42:12 25 **Q** So when you were asked questions about the Long Beach

03:42:16 1 pharmacist who complained that his store managers, the two
03:42:20 2 store managers, were pressuring him, is that a totally
03:42:26 3 different situation?

03:42:27 4 **A** Yes.

03:42:28 5 **Q** Why?

03:42:30 6 **A** Because our policy is very specific that we support
03:42:44 7 our pharmacists when they refuse to fill a prescription. I
03:42:47 8 was surprised and honestly, you know, concerned that we had
03:42:52 9 store managers, particularly not even in that pharmacist's
03:42:55 10 store, telling that pharmacist that he should or shouldn't
03:43:00 11 fill a prescription.

03:43:01 12 **Q** Is that what you want to see from your store managers?

03:43:04 13 **A** No.

03:43:08 14 **Q** Is the nondispensing report that is referred to in
03:43:11 15 this e-mail the only report that your team runs on
03:43:14 16 pharmacists to make sure they're doing their jobs?

03:43:17 17 **A** No.

03:43:18 18 **Q** Does pharmaceutical integrity track the percentage of
03:43:27 19 controlled substance prescriptions filled at each of its
03:43:29 20 stores?

03:43:29 21 **A** Yes.

03:43:29 22 **Q** Did you look at those numbers for the Lake and
03:43:32 23 Trumbull County stores?

03:43:33 24 **A** I did.

03:43:33 25 **Q** Take a look if you would, please, at the document

03:43:36 1 behind Tab 14 of your binder. This is Exhibit 2005.

03:43:43 2 **A** Okay.

03:43:43 3 **Q** And let me know if you recognize what that is.

03:43:45 4 **A** I do.

03:43:45 5 **Q** What is it?

03:43:46 6 **A** It is one of the reports that my team will run. I
03:43:54 7 recognize some of the store -- the store numbers as being
03:43:58 8 the stores you were referring to.

03:44:02 9 **Q** Does your team generate reports like this on a regular
03:44:07 10 basis?

03:44:07 11 **A** Yes.

03:44:07 12 **Q** Do you know how far back they go?

03:44:08 13 **A** When my team was formed, we started doing this for my
03:44:14 14 team. Now, I don't know if it was done prior to that, but
03:44:18 15 my team began doing it when my team was formed, for me.

03:44:22 16 **Q** I'll walk you across the columns just so we can give
03:44:25 17 the jury a sense of what's in this report.

03:44:29 18 The first column on the left says "Run date."

03:44:34 19 Is that the date the report was run?

03:44:36 20 **A** Yes. Well -- yes.

03:44:41 21 **Q** And you can see there's the same date many times in a
03:44:43 22 row, and then you can see in the third column there are
03:44:47 23 different store numbers there.

03:44:48 24 Do you see that?

03:44:48 25 **A** Yes.

03:44:49 1 **Q** And did you say you recognized some of those as the
03:44:52 2 Trumbull and Lake County stores that you had been looking at
03:44:56 3 information for?

03:44:56 4 **A** Yes.

03:44:56 5 **Q** I don't want to talk about all of these different
03:44:59 6 columns, but I'd like to focus on the one that says Rx
03:45:03 7 control percent.

03:45:03 8 What is that?

03:45:04 9 **A** It's the total percentage of controlled substance that
03:45:08 10 that store dispensed during that time frame.

03:45:12 11 **Q** When you looked at this report for the Lake and
03:45:17 12 Trumbull County stores, did you look to see whether any of
03:45:20 13 the control percentages seemed out of the ordinary to you?

03:45:23 14 **A** Yes.

03:45:24 15 **Q** And what did you determine?

03:45:25 16 **A** I did not see anything out of the ordinary.

03:45:28 17 **Q** All right. It also shows a cash percentage.

03:45:34 18 Do you see that?

03:45:35 19 **A** Yes.

03:45:35 20 **Q** What does that mean?

03:45:37 21 **A** So the cash percent is the total number of controlled
03:45:46 22 substance prescriptions that is -- that are paid for by cash
03:45:50 23 at that location.

03:45:51 24 **Q** Okay. Does pharmaceutical integrity also run reports
03:45:59 25 at a store level on prescriptions filled for combinations of

03:46:04 1 medications that might increase the risk to the patient?

03:46:07 2 **A** Yes.

03:46:07 3 **Q** What is the purpose of a report like that?

03:46:10 4 **A** So that report is a report that we give field leaders
03:46:19 5 to on occasion when they go into the store, if there is one
03:46:27 6 of those reports for that specific store, gives them an
03:46:31 7 example to look to make sure that all the elements of good
03:46:36 8 faith dispensing per our policy were followed.

03:46:38 9 **Q** So is the idea that the report includes information
03:46:41 10 about individual prescriptions?

03:46:42 11 **A** Yes.

03:46:42 12 **Q** Is the point of the report to say, hey, these
03:46:47 13 prescriptions should not have been filled?

03:46:48 14 **A** No.

03:46:48 15 **Q** What is the point when the field leader goes into the
03:46:51 16 store with that kind of a report?

03:46:53 17 **A** To look to make sure that all elements of good faith
03:46:57 18 dispensing did indeed happen, that documentation took place,
03:47:01 19 that the pharmacists who filled it understood what they were
03:47:05 20 doing and using caution in filling those prescriptions.

03:47:11 21 **Q** Does pharmaceutical integrity also run other types of
03:47:14 22 reports called coaching opportunities reports?

03:47:16 23 **A** Yes.

03:47:17 24 **Q** If you'll take a look behind Tab 16, I'll ask you to
03:47:20 25 let me know if that's a coaching opportunities report.

03:47:26 1 **A** Yes, it is.

03:47:26 2 **Q** Can you tell if it's a coaching opportunities report

03:47:31 3 for the stores in Lake and Trumbull County?

03:47:34 4 **A** Yes, it is.

03:47:34 5 **Q** Is that what I've got up on the screen there?

03:47:43 6 **A** Yeah.

03:47:43 7 **Q** Many tiny rows?

03:47:48 8 **A** Yeah.

03:47:48 9 **Q** I'll just call out the column headers again. You can

03:47:51 10 see along the left side again we've got the store number, is

03:47:53 11 that what it is?

03:47:54 12 **A** Yes.

03:47:54 13 **Q** You can see Store Number 5549. We've seen that one

03:47:57 14 before, do you remember that?

03:48:00 15 **A** Yes.

03:48:00 16 **Q** And then it's got some information about the drug.

03:48:07 17 And then over to the right so that you can get an

03:48:09 18 idea, it has more information about the individual

03:48:12 19 prescription, like the day's supply and the dose and some

03:48:17 20 other information. Then there's a column that says

03:48:20 21 "reason."

03:48:20 22 What is that?

03:48:21 23 **A** So the reason is why it triggered on this report.

03:48:26 24 **Q** And again, what is the purpose of running this kind of

03:48:29 25 a report, this coaching opportunities report?

03:48:31 1 **A** To give the field leaders exact examples to -- in the
03:48:37 2 course of their supervision visits to pull those examples
03:48:40 3 and ensure that the appropriate steps were taken in the good
03:48:46 4 faith dispensing process.

03:48:46 5 **Q** Is the purpose of giving the field leaders a report
03:48:50 6 like this to say, hey, these prescriptions should not have
03:48:53 7 been filled?

03:48:54 8 **A** No.

03:48:54 9 **Q** Do the pharmacists see these reports?

03:48:57 10 **A** No.

03:48:57 11 **Q** Would you agree with me that some of the reason codes
03:49:05 12 for the prescriptions on this coaching opportunities report
03:49:07 13 are similar to some of the red flags we've seen in the good
03:49:14 14 faith dispensing policy?

03:49:14 15 **A** Yes.

03:49:15 16 **Q** All right. You've said that the field leaders receive
03:49:18 17 reports like this. Does that include district managers?

03:49:25 18 **A** I do believe that a district manager would see this.

03:49:27 19 **Q** Would a healthcare supervisor see a report like this?

03:49:30 20 **A** Yes.

03:49:30 21 **Q** Would district managers -- well, just before I move
03:49:35 22 on, would a pharmacy manager who is in the store see a
03:49:39 23 report like this?

03:49:40 24 **A** Only if their field leader showed it to them.

03:49:43 25 **Q** Why would a field leader show a pharmacy manager a

03:49:49 1 report like this? Explain it to the jury if you would.

03:49:51 2 **A** So if -- when the field leader is going into the store
03:49:54 3 on the supervision visit and they are collecting for good
03:49:58 4 faith dispensing and ensuring that the stores are doing what
03:50:00 5 they're supposed to be doing with their documentation or
03:50:04 6 just their overall processes around good faith dispensing,
03:50:09 7 the field leader would access the report at the store, and
03:50:13 8 they would then go to the hard copy files and pull that hard
03:50:17 9 copy or also they could look in the computer system for
03:50:22 10 specific notes around that prescription.

03:50:25 11 **Q** What does the field leader do if they don't find what
03:50:29 12 they're supposed to find when they do that?

03:50:30 13 **A** Yeah, so it's intended to coach the employee on the
03:50:36 14 proper documentation for that prescription.

03:50:41 15 **Q** Do -- when field leaders are having these coaching
03:50:48 16 conversations, is that something that sometimes happens
03:50:50 17 during something called a store walk?

03:50:52 18 **A** It could, yes.

03:51:00 19 **Q** You were asked questions earlier today about the
03:51:03 20 personal notes of a Walgreens district manager named
03:51:07 21 Brian Joyce.

03:51:07 22 Do you remember those questions?

03:51:08 23 **A** Yes.

03:51:11 24 **Q** You were asked questions about Mr. Joyce's personal
03:51:13 25 notes on his visits to pharmacies in his district.

03:51:16 1 Do you remember that?

03:51:17 2 **A** Yes.

03:51:17 3 **Q** In addition to whatever personal notes Mr. Joyce may
03:51:23 4 have chosen to make, are there other ways that the field
03:51:25 5 leaders document store walk visits?

03:51:33 6 **A** I don't know that off the top of my head.

03:51:35 7 **Q** Are you familiar with something called a compliance
03:51:37 8 checklist?

03:51:39 9 **A** Yes.

03:51:39 10 **Q** What is a compliance checklist?

03:51:41 11 **A** A compliance checklist, we have a couple different
03:51:47 12 ones that field leaders do and also the HCS and the DM could
03:51:53 13 do that together. And it is a series of questions that are
03:51:59 14 used as a tool to evaluate the overall compliance of the
03:52:08 15 store, front of store and pharmacy.

03:52:10 16 **Q** Are the compliance checklist visits, is that
03:52:14 17 sometimes -- is that separate from a store walk or is it
03:52:16 18 something that's sometimes done in conjunction or how does
03:52:18 19 that work?

03:52:18 20 **A** It's separate.

03:52:19 21 **Q** Are there visits that the field leader does in
03:52:24 22 conjunction with the compliance checklists, are those
03:52:28 23 documented through a centralized system?

03:52:31 24 **A** Yes.

03:52:31 25 **Q** Is there a questionnaire with questions about the

03:52:33 1 front end of the store and also questions about the pharmacy
03:52:37 2 that are supposed to be filled out?

03:52:39 3 **A** Yes.

03:52:44 4 **Q** Do the questions on those questionnaires change from
03:52:47 5 month to month?

03:52:47 6 **A** Yes.

03:52:48 7 **Q** Do they sometimes include questions about good faith
03:52:53 8 dispensing?

03:52:53 9 **A** Yes.

03:52:53 10 **Q** Do they sometimes include questions about whether the
03:52:58 11 pharmacy -- whether the pharmacists are properly completing
03:53:04 12 target drug checklists?

03:53:05 13 **A** Yes.

03:53:09 14 **Q** Do the compliance walk documents that you're
03:53:14 15 discussing sometimes include questions where instructions to
03:53:18 16 go find five target drug prescriptions in the store files
03:53:24 17 and determine whether the checklist has been properly
03:53:27 18 completed?

03:53:27 19 **A** Yes.

03:53:27 20 **Q** And if the field leader who goes into the store and
03:53:37 21 completes that questionnaire and answers those questions
03:53:40 22 doesn't find what they're supposed to find, what are they
03:53:42 23 supposed to do?

03:53:42 24 **A** So they are supposed to speak with the pharmacists
03:53:49 25 that are on duty in addition to the pharmacy manager to let

03:53:52 1 them know that they didn't find it and coach them to remind
03:53:56 2 them of the policy and what the policy entails.

03:54:00 3 **Q** Now, I believe you testified that you know
03:54:04 4 Brian Joyce; is that right?

03:54:04 5 **A** I do.

03:54:05 6 **Q** If you would, please, take a look at the document
03:54:07 7 behind Tab 17 of your binder.

03:54:11 8 **A** Okay.

03:54:11 9 **Q** It's Exhibit 2625.

03:54:20 10 And do you see at the beginning of the e-mail chain
03:54:22 11 that you're copied on it?

03:54:23 12 **A** Yes.

03:54:26 13 **Q** I'll call that out.

03:54:42 14 It's an e-mail from an Rx Integrity e-mail address.

03:54:46 15 Can you explain to the jury what that means?

03:54:49 16 **A** So the Rx Integrity e-mail address is an e-mail
03:54:56 17 address that's used by my team, so all the members of my
03:55:00 18 team have access to this e-mail address. And that's what it
03:55:06 19 is.

03:55:06 20 **Q** The subject line is "Rx Integrity reports for the
03:55:09 21 month of May now available."

03:55:12 22 Do you see that?

03:55:12 23 **A** Yes.

03:55:13 24 **Q** What is an Rx Integrity report, and specifically is
03:55:17 25 that something that is the same as what we've been talking

03:55:19 1 about so far, is it something different?

03:55:22 2 **A** They would be the same, but there's more reports than
03:55:25 3 what we talked to in there.

03:55:26 4 **Q** Got it.

03:55:27 5 And the message says, "Hello, this message is being
03:55:32 6 sent to notify you that the Rx Integrity monthly reports are
03:55:35 7 now available. You can access these reports by going to the
03:55:39 8 following site," and then it provides a website -- or like a
03:55:42 9 link to the website.

03:55:43 10 Do you see that?

03:55:44 11 **A** Yes.

03:55:44 12 **Q** And if we scroll up to see what happens next -- we
03:55:54 13 need to go to the next page -- do you see, I think it's the
03:56:05 14 second page, the e-mail from Zachary Leslie to Brian Joyce
03:56:09 15 and another gentleman?

03:56:10 16 **A** Yes.

03:56:11 17 **Q** He says, "Beau and Brian, this is May's report, and as
03:56:18 18 expected the same two stores are on this list for oxycodone.
03:56:22 19 Have either of you received any feedback from these stores
03:56:25 20 around dispensing habits, GFD policy execution, doctors
03:56:29 21 prescribing more oxy, new pharmacists working at their
03:56:33 22 locations, et cetera?"

03:56:38 23 And then he clips into his e-mail what looks to be
03:56:41 24 part of an Excel report.

03:56:43 25 Is that correct?

03:56:43 1 **A** Yes.

03:56:43 2 **Q** Do you see where it says in what looks like the Excel
03:56:49 3 portion, "Deterioration 500 plus"?

03:56:52 4 **A** Yes.

03:56:52 5 **Q** What does that mean? Well, actually, let me take a
03:56:56 6 step back. I apologize.

03:56:57 7 Does the part of this e-mail that looks like it's
03:57:00 8 clipped from an Excel spreadsheet, does that appear to you
03:57:02 9 to be a portion of an Rx Integrity report?

03:57:05 10 **A** Yes.

03:57:05 11 **Q** How can you tell that?

03:57:06 12 **A** Well, we do have -- we do use that terminology, and
03:57:16 13 we -- that's just a report that we would use.

03:57:18 14 **Q** What is deterioration 500 plus, what does that mean?

03:57:21 15 **A** So we track the number of controlled substances that
03:57:29 16 are dispensed by stores, and we track the number of, like,
03:57:34 17 oxycodone and hydromorphone and methadone that are tracked,
03:57:38 18 and we rank the stores. We do not give the field leaders
03:57:43 19 the number of where they sit for the chain for dispensing,
03:57:49 20 but we will tell them if their store is starting to dispense
03:57:53 21 more and they are moving up, so if, let's say, for example,
03:57:57 22 we have -- well, we have, like, 9000 stores today, and if a
03:58:02 23 store is ranked number 5000 today and next month it's ranked
03:58:10 24 4500 because they've started dispensing more controlled
03:58:13 25 substances of that report, the deterioration would mean that

03:58:18 1 they moved up in dispensing more controlled substances by
03:58:23 2 500 points or places?

03:58:25 3 **Q** What is the purpose of sharing that information with
03:58:28 4 your field leaders?

03:58:29 5 **A** So we want them to know that their store is dispensing
03:58:34 6 more oxy, and that they should be checking on their
03:58:40 7 supervision visits, do the dispensing patterns for that
03:58:47 8 specific store make sense, what has changed in their
03:58:50 9 business that would explain why they're dispensing more of a
03:58:53 10 controlled substance.

03:58:54 11 **Q** This report that we're looking at here, the duration
03:58:58 12 500 plus report, is that different from the coaching
03:59:01 13 opportunities report that we looked at before?

03:59:03 14 **A** Yes.

03:59:03 15 **Q** Is it different from the report that we looked at that
03:59:06 16 showed the control -- the percentage of controlled
03:59:09 17 substances for each of the stores?

03:59:11 18 **A** Yes.

03:59:11 19 **Q** Is this another tool that Walgreens provides to its
03:59:18 20 field leaders to help them look at what's going on in the
03:59:20 21 stores around controlled substances?

03:59:22 22 **A** Yes.

03:59:22 23 **Q** All right. Do you know that Mr. Joyce, Brian Joyce,
03:59:28 24 was the district manager overseeing Walgreens' Trumbull
03:59:33 25 County stores? Are you aware of that?

03:59:34 1 **A** Yes.

03:59:34 2 **Q** I just want to show you the response, and my question
03:59:41 3 is going to be whether this is what you would hope to see,
03:59:45 4 if you have any concerns about it.

03:59:46 5 This is the response from RXM 09077.

03:59:54 6 What is that formulation, that e-mail address?

03:59:56 7 **A** That's an e-mail address specific to Store 0 -- or
04:00:01 8 Store 09077. So that would come from a pharmacy manager at
04:00:05 9 that store.

04:00:08 10 **Q** The pharmacy manager says to Brian Joyce, "Hey, Brian,
04:00:11 11 so Walmart/Sam's Club, and Giant Eagle have stopped filling
04:00:14 12 controls for a local doctor named Frank Veres. This doc has
04:00:18 13 a reputation for prescribing a high number of pain meds, so
04:00:23 14 I think over the past few months we have been picking up a
04:00:25 15 lot of his patients.

04:00:26 16 "From our angle, Veres has always complied with our
04:00:30 17 GFD guidelines and his patients are always on time, but the
04:00:32 18 high ratio of controls written has become more obvious. To
04:00:36 19 combat this, Greg and I have discussed not accepting any new
04:00:40 20 controls from his office (since his patients have been
04:00:42 21 displaced from those other pharmacies and the flood of
04:00:46 22 controls is imminent). At this time, we still feel
04:00:51 23 comfortable filling controls for our patients that have been
04:00:54 24 coming here for years, but that is subject to change. I
04:00:56 25 would like to hear your thoughts on the matter. Thanks."

04:00:58 1 Did I read all of that correctly?

04:01:00 2 **A** Yes.

04:01:00 3 **Q** And then you can see Brian's response is, "See below.

04:01:11 4 Is there any way that we can refuse his scripts? This MD

04:01:14 5 has been a problem for a long time."

04:01:16 6 And it goes on. And I'll call out the last two

04:01:20 7 e-mails in the chain so you can see how they're addressing

04:01:23 8 this.

04:01:26 9 First of all, let's see who Zach Leslie is.

04:01:31 10 Can you see that Mr. Leslie is an area healthcare
04:01:34 11 supervisor?

04:01:34 12 **A** Yes.

04:01:34 13 **Q** Are area healthcare supervisors pharmacists?

04:01:37 14 **A** Yes.

04:01:38 15 **Q** Mr. Leslie says, "We have to continue to adhere to our
04:01:46 16 GFD policy and guidelines. However, if they are refusing
04:01:49 17 scripts and they feel this is a problem due to poor
04:01:53 18 prescribing behaviors, the store can also contact the Ohio
04:01:56 19 Board of Medicine to report the prescriber. Please ensure
04:02:00 20 that if they feel this doctor is not prescribing medications
04:02:03 21 appropriately, they need to have good documentation."

04:02:06 22 And then Mr. Joyce forwards that to the RXM and says,
04:02:12 23 "Review each prescription on its own merit."

04:02:16 24 Does this course of communication between the field
04:02:18 25 leader and the pharmacist at the store, in your view,

04:02:22 1 comport with Walgreens policy?

04:02:25 2 **A** Yes.

04:02:25 3 **Q** Why?

04:02:26 4 **A** Because it's showing that multiple leaders in the
04:02:30 5 district as well as the pharmacy manager are doing their due
04:02:35 6 diligence around the dispensing of controlled substances and
04:02:41 7 why more controlled substances are being filled in their
04:02:43 8 store.

04:02:44 9 **Q** All right. I have a few questions about the oversight
04:02:48 10 that you do around orders that are placed by the Walgreens
04:02:53 11 pharmacies to the distribution centers.

04:02:56 12 Does Walgreens distribute controlled substances today?

04:03:00 13 **A** No.

04:03:00 14 **Q** At some point did Walgreens distribute controlled
04:03:07 15 substances to its own pharmacies?

04:03:08 16 **A** Yes.

04:03:08 17 **Q** Do you know when Walgreens stopped doing that?

04:03:10 18 **A** We started getting out of doing that around the time
04:03:18 19 that I started the pharmacy integrity team, but I believe we
04:03:23 20 were completely free of all controlled substances from our
04:03:26 21 distribution centers at the end of 2014. I might be off on
04:03:29 22 the date daily.

04:03:33 23 **Q** Did Walgreens in the time frame when it was
04:03:35 24 distributing controlled substances ever distribute to any
04:03:39 25 pharmacy that was not a Walgreens pharmacy?

04:03:41 1 **A** No.

04:03:41 2 **Q** I believe you testified already that when you started
04:03:48 3 in pharmaceutical integrity in 2012, Walgreens had a system
04:03:52 4 in place to monitor the orders that Walgreens pharmacies
04:03:57 5 placed to its distribution centers.

04:03:59 6 Do I have that right?

04:04:00 7 **A** Yes.

04:04:00 8 **Q** When you started in 2012, did you have an
04:04:07 9 understanding that at that point in time, the DEA wanted
04:04:12 10 Walgreens to cancel orders that it deemed potentially
04:04:19 11 suspicious and to investigate them before shipping?

04:04:22 12 MR. WEINBERGER: Objection.

04:04:31 13 THE COURT: Let's go on the headphones for a
04:04:33 14 minute.

04:04:34 15 (At side bar at 4:04 p.m.) ever

04:04:43 16 THE COURT: Mr. Weinberger, what's the
04:04:44 17 objection?

04:04:45 18 MR. WEINBERGER: There's been no foundation
04:04:46 19 laid about her having reviewed any of the DEA regulations or
04:04:53 20 what her knowledge was with respect to distribution.

04:04:58 21 MS. SWIFT: I just asked her if she had an
04:05:00 22 understanding.

04:05:00 23 Sorry, Judge.

04:05:01 24 THE COURT: I'll allow the question. She
04:05:03 25 either has this understanding or she doesn't. If she does,

04:05:06 1 then we'll go further.

04:05:09 2 MR. WEINBERGER: Okay. Thank you.

04:05:11 3 (In open court at 4:05 p.m.)

04:05:17 4 BY MS. SWIFT:

04:05:18 5 **Q** All right. I'll withdraw and reask it again just so
04:05:21 6 that it's fresh in your mind.

04:05:23 7 When you started in pharmaceutical integrity in
04:05:29 8 2012 -- strike that. I already asked that one.

04:05:30 9 When you started in pharmaceutical integrity in 2012,
04:05:36 10 did you have an understanding at that point in time that the
04:05:40 11 DEA wanted Walgreens to cancel orders from its pharmacies
04:05:47 12 that it deemed potentially suspicious and to investigate
04:05:50 13 them before shipping them?

04:05:51 14 MR. WEINBERGER: Objection.

04:05:57 15 THE COURT: Overruled.

04:05:58 16 **A** I understood that the responsibility of distributing a
04:06:05 17 controlled substance --

04:06:05 18 THE COURT: I'd like you to answer that
04:06:07 19 specific question if you can. Yes or no, did you have an
04:06:10 20 understanding?

04:06:12 21 **A** Yes.

04:06:13 22 **Q** At Walgreens today, and since you've been in place in
04:06:20 23 2012, does Walgreens have a system that evaluates
04:06:26 24 potentially suspicious orders?

04:06:28 25 **A** Yes.

04:06:29 1 **Q** How does that system work?

04:06:33 2 **A** So a pharmacy -- a pharmacy cannot order more tablets

04:06:40 3 that come in to that location above the ceiling without

04:06:46 4 filling out a order form. And --

04:06:51 5 **Q** Do -- sorry. Go ahead. I didn't mean to interrupt

04:06:54 6 you.

04:06:55 7 **A** And the order form will come to my team requesting

04:06:59 8 whether or not -- or requesting that they want more tablets.

04:07:02 9 And my team will determine whether or not the documentation

04:07:07 10 for getting more tablets into that location makes sense for

04:07:10 11 what's happening in the business after the district manager

04:07:13 12 does their due diligence, it goes to them first, then it

04:07:16 13 goes to my team.

04:07:20 14 And if we deem that it passes and it makes sense, then

04:07:25 15 the order is released to the wholesaler.

04:07:30 16 **Q** Do you know whether prior to 2012, before you came

04:07:33 17 into your role in pharmaceutical integrity, do you know

04:07:37 18 whether DEA guidance on how to handle that process of

04:07:41 19 evaluating suspicious orders was different?

04:07:43 20 **A** I don't know specifics, but I know it changed.

04:07:59 21 **Q** You testified that you had an understanding that prior

04:08:02 22 to 2012, when you came on board in pharmaceutical integrity,

04:08:06 23 there was a system that Walgreens had in place, but you were

04:08:10 24 not familiar with how it worked.

04:08:13 25 Why is that? Why didn't you have a familiarity with

04:08:15 1 how that system worked?

04:08:16 2 **A** That was a different department. And when I came on
04:08:22 3 board, the new system was coming into place.

04:08:25 4 **Q** Do you know how many people worked on the earlier
04:08:27 5 system over time?

04:08:29 6 **A** I do not.

04:08:30 7 **Q** Do you know the processes and procedures that they
04:08:33 8 followed?

04:08:34 9 MR. WEINBERGER: Objection.

04:08:37 10 THE COURT: Sustained.

04:08:50 11 **Q** I think you testified a moment ago that the system
04:08:52 12 that Walgreens has in place today to evaluate orders from
04:08:57 13 its pharmacists involves ceiling limits and tolerance. Is
04:09:02 14 that a fair characterization?

04:09:03 15 **A** Yes.

04:09:03 16 **Q** The pharmacies, if they want to order more controlled
04:09:11 17 substances and they get within the ceiling limits and the
04:09:16 18 tolerance limits, what do they have to do in order to get
04:09:19 19 that additional medication?

04:09:20 20 **A** They have to request through an order form and fill
04:09:24 21 out documentation as to the reason why they need that
04:09:28 22 additional medication in their store.

04:09:31 23 **Q** Why didn't Walgreens stop using that process of
04:09:39 24 evaluating orders in 2014 when Walgreens stopped
04:09:43 25 distributing controlled substances?

04:09:43 1 **A** You know, I felt that it was a good checks and
04:09:48 2 balances for us to, you know, make sure that we have the
04:09:50 3 information about our stores. And additionally, just
04:09:54 4 because Walgreens approves that it's okay for those stores
04:09:59 5 to get more tablets does not mean that the wholesaler is
04:10:03 6 going to approve it. And there are times when it would
04:10:07 7 trigger on the wholesaler side as an order of interest, and
04:10:15 8 they would ask our team for information about that order,
04:10:18 9 and I would have that information at the ready and be able
04:10:20 10 to give it to the wholesaler.

04:10:23 11 And it, you know, helps patient care because generally
04:10:27 12 they have a patient waiting and, you know, it would save
04:10:30 13 time for the wholesaler because we'd have that information
04:10:33 14 already documented from the store and the district manager
04:10:37 15 on that order.

04:10:38 16 **Q** I'm going to see if I can break that down a little
04:10:40 17 bit.

04:10:41 18 Today does Walgreens order controlled substances from
04:10:47 19 another distributor, a wholesaler as you're referring to it?

04:10:49 20 **A** Yes.

04:10:50 21 **Q** Is it your understanding that the wholesaler Walgreens
04:10:54 22 orders from has its own order monitoring system in place?

04:10:57 23 **A** Yes.

04:10:57 24 **Q** Is that what you were referring to a moment ago when
04:11:00 25 you said it might not go through the wholesaler?

04:11:02 1 **A** Yes.

04:11:02 2 **Q** Then Walgreens also has an additional system on top of
04:11:06 3 that to monitor the orders that are placed by its
04:11:09 4 pharmacies, is that what I'm hearing you say?

04:11:11 5 **A** Yes.

04:11:11 6 **Q** Do you have an understanding whether Walgreens is
04:11:14 7 obligated today to have a suspicious order monitoring system
04:11:21 8 in place since it's not distributing anymore?

04:11:23 9 MR. WEINBERGER: Objection.

04:11:24 10 THE COURT: Overruled.

04:11:25 11 **A** We are not required. We do it as an extra step.

04:11:29 12 **Q** Is one of the reasons that you do that as an extra
04:11:32 13 step because if anything is out of the ordinary at one of
04:11:35 14 your stores, you want to know about it?

04:11:37 15 **A** Yes.

04:11:37 16 **Q** Is one of the reasons you do that, even though you're
04:11:40 17 not required to do it, because you want to prevent
04:11:43 18 controlled substances from being diverted?

04:11:49 19 **A** Yes.

04:11:49 20 **Q** All right. You were asked questions today about a
04:12:01 21 2013 settlement agreement with the DEA.

04:12:02 22 Do you remember that?

04:12:03 23 **A** Yes.

04:12:03 24 **Q** And you were asked about the addendum on prospective
04:12:08 25 compliance, which are the three pages at the end of that

04:12:11 1 agreement.

04:12:11 2 Do you remember those questions?

04:12:12 3 **A** Yes.

04:12:12 4 **Q** Do you still have handy Plaintiffs' Exhibit 15? It's
04:12:35 5 a big thick one.

04:12:42 6 **A** Oh, yes. Thank you.

04:12:43 7 **Q** Ms. Polster, do you have an understanding that this
04:12:47 8 2013 agreement related to a distribution center in Florida
04:12:51 9 and six Florida pharmacies?

04:12:53 10 **A** Yes.

04:12:53 11 **Q** Is the -- I'll ask you to turn to the last three pages
04:12:58 12 of the settlement agreement, which are that addendum on
04:13:01 13 prospective compliance.

04:13:02 14 Do you have that?

04:13:06 15 **A** Yes.

04:13:06 16 **Q** Is that three pages, is that a list of things that
04:13:09 17 Walgreens agreed to do as part of a settlement with the DEA
04:13:13 18 regarding six pharmacies in Florida?

04:13:15 19 **A** Yes.

04:13:17 20 **Q** Were you involved in making sure that Walgreens
04:13:19 21 complied with that agreement?

04:13:20 22 **A** Yes.

04:13:25 23 **Q** And you can see in the second sentence -- I want to
04:13:26 24 pull it out.

04:13:45 25 The second sentence on the first page of the addendum

04:13:49 1 says, "To the extent any compliance measures identified
04:13:53 2 below are not yet in place, Walgreens commits to implement
04:13:57 3 such measures within the time frame specified herein."

04:14:00 4 Do you see that?

04:14:04 5 **A** Yes.

04:14:04 6 **Q** Were some of the items on this list of things that
04:14:06 7 Walgreens was agreeing to do, were they things that
04:14:08 8 Walgreens was already doing?

04:14:09 9 **A** Yes.

04:14:09 10 **Q** For example, the first item on the list is to maintain
04:14:16 11 a department of pharmaceutical integrity.

04:14:18 12 That's your department, right?

04:14:20 13 **A** Yes.

04:14:20 14 **Q** Was your department already up and running by the time
04:14:24 15 this agreement was put in place?

04:14:25 16 **A** Yes.

04:14:25 17 **Q** And you agreed to keep it in place. That's part of
04:14:27 18 the agreement, right?

04:14:28 19 **A** Yes.

04:14:28 20 **Q** Have you kept your department in place?

04:14:32 21 **A** Yes.

04:14:32 22 **Q** The addendum to the agreement also says your
04:14:37 23 department is to be composed of personnel with
04:14:43 24 pharmacy-related training and managerial personnel. It says
04:14:51 25 those people should be trained in relevant diversion-related

04:14:55 1 issues to coordinate compliance efforts related to
04:14:57 2 controlled substances.

04:14:58 3 Do you see that?

04:14:58 4 **A** Yes.

04:14:58 5 **Q** Was your group made up of those kinds of people even
04:15:03 6 before this agreement?

04:15:04 7 **A** Yes.

04:15:04 8 **Q** Do the people on your team coordinate compliance
04:15:19 9 efforts related to controlled substances?

04:15:20 10 **A** Yes.

04:15:20 11 **Q** Have they done that ever since your department has
04:15:23 12 been in place?

04:15:23 13 **A** Yes.

04:15:23 14 **Q** Did your team set up a dedicated contact point, an
04:15:30 15 e-mail address for DEA to facilitate Walgreens' responses to
04:15:34 16 DEA requests for information?

04:15:36 17 **A** Yes.

04:15:36 18 **Q** Then if you scroll down -- well, I'll scroll down.

04:15:41 19 You see the section on pharmacies?

04:15:43 20 **A** Yes.

04:15:43 21 **Q** It says that within -- well, let me direct your
04:15:50 22 attention.

04:15:53 23 You're familiar with this addendum, correct,
04:15:56 24 Ms. Polster?

04:15:57 25 **A** Yes.

04:15:57 1 **Q** Does this second provision here have Walgreens
04:16:03 2 committing to provide within two business days of a request
04:16:07 3 from the DEA to provide controlled substance dispensing logs
04:16:14 4 consisting of the categories of information the regulations
04:16:16 5 require dispensers to maintain as records?

04:16:18 6 **A** Yes.

04:16:19 7 **Q** Does your team do that when the DEA asks you to?

04:16:21 8 **A** Yes.

04:16:23 9 **Q** The next item on the list is about the stickering of
04:16:26 10 paper controlled substance prescriptions.

04:16:30 11 Do you see that?

04:16:30 12 **A** Yes.

04:16:30 13 **Q** Does Walgreens do what the DEA asked it to do with
04:16:35 14 respect to stickering of controlled substance prescriptions?

04:16:38 15 **A** Yes.

04:16:38 16 **Q** It also says that Walgreens will maintain a paper file
04:16:42 17 of those prescriptions organized chronologically by fill
04:16:46 18 date and will provide a list upon request of the DEA.

04:16:50 19 Does Walgreens do that?

04:16:52 20 **A** Yes.

04:16:52 21 **Q** It says, "Walgreens will maintain paper prescriptions
04:16:58 22 at the pharmacy for two years or however long they're
04:17:02 23 required to be maintained by state law, whichever is
04:17:05 24 longer."

04:17:05 25 Was Walgreens already doing that at the time of this

04:17:08 1 agreement?

04:17:08 2 **A** Yes.

04:17:08 3 **Q** Did Walgreens continue to do that?

04:17:10 4 **A** Yes.

04:17:11 5 **Q** There are two more pages of items in this addendum on
04:17:18 6 prospective compliance. Do you agree with that?

04:17:21 7 **A** Yes.

04:17:21 8 **Q** Have you and your team taken steps to make sure that
04:17:24 9 you did what you needed to do to comply with that agreement?

04:17:27 10 **A** Yes.

04:17:27 11 **Q** Has DEA ever put you on notice that it believed
04:17:37 12 Walgreens was not in compliance with this agreement?

04:17:41 13 **A** No.

04:17:43 14 **Q** All right. We're getting close to the end.

04:17:45 15 Ms. Polster, are you and your team in Chicago, are you
04:17:50 16 aware of the problems with opioid abuse around the country
04:17:52 17 today?

04:17:53 18 **A** Yes.

04:17:53 19 **Q** Have you been aware of that for well over a decade?

04:17:56 20 **A** Yes.

04:17:57 21 **Q** Have you personally taken steps throughout your time
04:18:01 22 at Walgreens to make sure that Walgreens' pharmacists are
04:18:11 23 also aware of the problems associated with opioid abuse?

04:18:13 24 **A** Yes.

04:18:14 25 **Q** Is that something you take seriously?

04:18:16 1 **A** Yes.

04:18:16 2 **Q** Can you explain to the jury why that is?

04:18:19 3 **A** Well, as the industry has changed, as the opioid
04:18:28 4 deaths and street drug deaths have increased, it's important
04:18:32 5 for our pharmacists to be trained and be aware of what's
04:18:39 6 happening across the industry. We try to keep them updated
04:18:42 7 on new things that change and make sure that they are, you
04:18:49 8 know, trained and have the most relevant information for
04:18:52 9 them to practice pharmacy in our stores.

04:18:56 10 **Q** And are the policies and procedures that we looked at
04:18:59 11 today part of the way you have communicated that to your
04:19:03 12 pharmacists?

04:19:03 13 **A** Yes.

04:19:06 14 **Q** Are the slide presentations and the training decks
04:19:09 15 that we've looked at today part of the way that you've tried
04:19:12 16 to communicate that to your pharmacists?

04:19:15 17 **A** Yes.

04:19:15 18 **Q** Have you in the course of your oversight of the
04:19:21 19 policies and procedures at Walgreens tried to take steps as
04:19:25 20 to reduce opioid abuse and diversion?

04:19:26 21 **A** Yes.

04:19:28 22 **Q** Do you sometimes speak at conferences to people
04:19:32 23 suffering from substance use disorders?

04:19:35 24 **A** Yes.

04:19:35 25 **Q** What do you talk to them about?

04:19:37 1 **A** I talk to them about our drug take back program, the
04:19:44 2 availability of naloxone.

04:19:48 3 **Q** What is your drug take back program? I'm not sure the
04:19:51 4 jury's heard about that before.

04:19:53 5 **A** We have a program in some of our stores where we have
04:19:56 6 a kiosk that patients can take old medications from their
04:20:01 7 medicine cabinets and put it in this kiosk in a location
04:20:05 8 that will then be destroyed and taken out of -- you know,
04:20:15 9 protect people in the people's homes from getting
04:20:19 10 medications that they should not use.

04:20:21 11 **Q** Let me break that down a little bit.

04:20:23 12 You said you have kiosks in the Walgreens stores.

04:20:27 13 Do you have them in all stores?

04:20:28 14 **A** No. They're in a little more than 1500.

04:20:31 15 **Q** Okay. Why is it important for people to dispose of
04:20:36 16 their unused medications?

04:20:38 17 **A** You know, it just decreases the chance of a
04:20:43 18 prescription being misused. You know, you might have
04:20:45 19 surgery or you might have had a baby or something like that
04:20:49 20 where you have -- you were given pain medications or any
04:20:53 21 other medication, frankly. And if you're not taking it
04:20:56 22 anymore, you should get it out of your house and destroy it
04:21:01 23 properly so it's not going into the water or wastewater,
04:21:05 24 it's going into an appropriate place to be incinerated or
04:21:10 25 destroyed safely.

04:21:12 1 Q Does Walgreens partner with law enforcement like the
04:21:16 2 DEA on drug take back programs?

04:21:18 3 A Yes, we do.

04:21:19 4 Q Does Walgreens also provide something called DisposeRx
04:21:26 5 kits?

04:21:26 6 A Yes, we do.

04:21:27 7 Q What are those?

04:21:27 8 **A** DisposeRx kits are -- it's a powder that is available
04:21:33 9 at all of our locations to give to a patient where if they
04:21:38 10 have leftover medications, they can pour this powder into
04:21:45 11 their vial and add water. It turns into a gummy substance
04:21:49 12 and it renders the pills inside the bottle inactive.

04:21:55 13 Q Are the drug take back kiosks that Walgreens has and
04:21:58 14 the DisposeRx kits that Walgreens provides, are those
04:22:02 15 programs meant to prevent diversion?

04:22:05 16 | A Yes.

04:22:07 17 Q Do you have an understanding of whether they do
04:22:10 18 prevent diversion?

04:22:13 19 MR. LANIER: Objection.

04:22:13 20 **A** Yes, they -- you're getting them out of the people's
04:22:19 21 homes so that somebody cannot take them if it's not
04:22:21 22 appropriate for them would be a way of presenting diversion

04:22:26 23 Q Ms. Polster, do you believe that Walgreens' pharmacists are well trained and supported to identify and resolve red flags on prescriptions?

04:22:29 24

04:22:32 25

04:22:34 1 **A** I do.

04:22:36 2 **Q** Do you believe that that's been the case for as long
04:22:39 3 as you can remember?

04:22:40 4 **A** Yes.

04:22:40 5 **Q** Do you believe that you have improved over time?

04:22:43 6 **A** Yes.

04:22:43 7 **Q** Do you believe Walgreens pharmacists are well trained
04:22:48 8 and supported to document the resolution of red flags when
04:22:52 9 they deem it to be appropriate?

04:22:54 10 **A** I do.

04:22:54 11 **Q** Do you believe that Walgreens' pharmacists are well
04:22:59 12 trained and supported to refuse illegitimate prescriptions?

04:23:02 13 **A** Yes.

04:23:03 14 **Q** Does Walgreens provide its pharmacists with data,
04:23:06 15 information, and other tools to assist them in doing their
04:23:09 16 jobs?

04:23:09 17 **A** Yes.

04:23:12 18 MS. SWIFT: Thank you. That's all I've got.

04:23:14 19 THE WITNESS: Thank you.

04:23:16 20 THE COURT: Thank you, Ms. Swift.

04:23:18 21 Any of the other defendants have any questions of
04:23:21 22 Ms. Polster?

04:23:22 23 MR. MAJORAS: No, Your Honor.

04:23:23 24 MS. SULLIVAN: No, Your Honor.

04:23:25 25 MR. DELINSKY: No, Your Honor.

04:23:25 1 THE COURT: Okay. It's time for redirect, but
04:23:27 2 also if any of the jurors have any questions, provide them
04:23:31 3 to Mr. Pitts. I'll take a look.

04:23:36 4 (Juror question review.)

04:28:41 5 MR. LANIER: Your Honor, we'll incorporate
04:28:43 6 these, and if we don't incorporate them all, then defense
04:28:46 7 counsel will.

04:28:55 8 MS. SWIFT: Actually, Your Honor, I'd be happy
04:28:57 9 to go ahead and ask the questions.

04:29:01 10 THE COURT: I think we'll go in turn. You'll
04:29:04 11 have a follow-up opportunity, Ms. Swift.

04:29:06 12 MS. SWIFT: Thank you, Your Honor.

04:29:33 13 MR. LANIER: May it please the Court, ladies
04:29:35 14 and gentlemen, Ms. Polster.

04:29:41 15 - - - - -

04:29:42 16 CROSS-EXAMINATION

04:29:42 17 BY MR. LANIER:

04:29:42 18 Q You have remarkable endurance, ma'am. So does the
04:29:45 19 jury, so does the judge.

04:29:46 20 I'm the plaintiffs' lawyer. My name is Mark Lanier.
04:29:49 21 And I'd like to ask you some questions, okay?

04:29:52 22 A Okay.

04:29:52 23 Q This time your road map gets a little bit longer, but
04:29:56 24 we're going to drive down this road at a fast pace.

04:29:59 25 We'll talk about the crisis, quick stop, we'll talk

04:30:03 1 about pharmacists, quick stop, training in good faith
04:30:07 2 dispensing, longer stop, computers, medium stop, store
04:30:11 3 reports, medium stop. Okay?

04:30:13 4 **A** Okay.

04:30:14 5 **Q** First stop, the crisis.

04:30:22 6 You said that you believed the opioid crisis began in
04:30:26 7 2011 because the change in the law concerning clinics.

04:30:30 8 Remember that testimony?

04:30:30 9 **A** Yes.

04:30:31 10 **Q** And in that regard I've got a few questions for you
04:30:35 11 that you could help us with. Legal changes on the pain
04:30:39 12 clinics, first question.

04:30:40 13 What law?

04:30:42 14 **A** I believe that was asked already, and I am not exactly
04:30:46 15 familiar as to what law it is.

04:30:48 16 **Q** So don't know?

04:30:49 17 **A** Okay.

04:30:50 18 **Q** Is that fair?

04:30:50 19 **A** Yes.

04:30:51 20 **Q** Where? Which states?

04:30:55 21 **A** I know Florida, and I've heard in other states as
04:31:01 22 well. I cannot think off the top of my head, but pain
04:31:05 23 clinics across the country stopped dispensing controlled
04:31:10 24 substances for prescriptions that the pain management
04:31:14 25 doctors were writing.

04:31:16 1 **Q** So others, don't know; is that fair?

04:31:19 2 **A** Okay.

04:31:19 3 **Q** When? When was the law changed?

04:31:24 4 **A** It began somewhere around 2010, 2011 is my
04:31:27 5 understanding.

04:31:28 6 **Q** And is that in Florida or is that all over the
04:31:30 7 country?

04:31:31 8 **A** Again, I remember Florida specifically, but saw the
04:31:35 9 change across the country.

04:31:36 10 **Q** But you're not a legal scholar on this, fair?

04:31:40 11 **A** Fair.

04:31:41 12 **Q** You're sort of just putting together from a patchwork
04:31:45 13 of memory. You don't really have any memory of this, do
04:31:47 14 you?

04:31:47 15 **A** Oh, I do have memory because we started seeing more
04:31:51 16 pain management prescriptions coming into our stores.

04:31:54 17 **Q** Great. So when did it change in Ohio?

04:31:56 18 **A** I don't know the answer to that specific to Ohio.

04:32:00 19 **Q** Were you a pharmacist when it changed?

04:32:04 20 **A** Yes.

04:32:04 21 **Q** So were you practicing behind the counter?

04:32:09 22 **A** No.

04:32:09 23 **Q** So when you say, I knew it was changing because the
04:32:12 24 way it was happening in our stores, were you working as a
04:32:15 25 pharmacist in those stores?

04:32:17 1 **A** No.

04:32:18 2 **Q** And this is what you attribute the drug rise to and

04:32:27 3 the epidemic, right?

04:32:31 4 **A** Part of it, yes.

04:32:32 5 **Q** And yet, if we look at a PowerPoint, weren't you over

04:32:36 6 the pharmaceutical integrity division in 2013?

04:32:41 7 **A** Yes.

04:32:41 8 **Q** If we look at a PowerPoint from the pharmaceutical

04:32:46 9 integrity division in 2013, Plaintiffs' Exhibit 14746,

04:32:55 10 please, Maria and Rachel -- Ms. Fleming and Ms. Lanier.

04:33:12 11 Do you have that in front of you, ma'am?

04:33:14 12 **A** I do.

04:33:15 13 **Q** So here your division, your unit that you head up puts

04:33:19 14 out a slide in 2013 talking about the epidemic?

04:33:22 15 **A** Yes.

04:33:23 16 **Q** And it has the epidemic associated with painkillers.

04:33:27 17 That's what opiates are, right?

04:33:28 18 **A** Yes.

04:33:30 19 **Q** And it has it starting in 2000 and has it going up

04:33:36 20 through 2009 at a pretty high rate, doesn't it?

04:33:40 21 **A** Yes.

04:33:40 22 **Q** And this is one that talks about it as a national

04:33:43 23 prescription drug epidemic. True?

04:33:46 24 **A** Yes.

04:33:47 25 **Q** Doesn't say it started in 2010 and '11 when the pain

04:33:51 1 clinics shut down. This has been a problem dating back to
04:33:55 2 2000, according to your unit's work, right?

04:33:59 3 **A** Yes.

04:33:59 4 **Q** So maybe it would have been helpful for your company
04:34:08 5 to put some of these policies in place much earlier. Make
04:34:12 6 sense?

04:34:16 7 **A** My company did put things in place.

04:34:19 8 **Q** Well, we'll look at the dates, ma'am, and you've
04:34:21 9 already looked at the dates. We'll look at the stuff y'all
04:34:23 10 have done since we filed the lawsuit, we'll look at all of
04:34:26 11 that. But I mean back in the 2000 to 2009 range would be
04:34:32 12 important to do everything you could to stop this national
04:34:34 13 epidemic, right?

04:34:37 14 **A** Right.

04:34:38 15 **Q** Thank you.

04:34:38 16 That's the crisis. Now let's talk about pharmacists.
04:34:45 17 Real brief start.

04:34:46 18 Starting salary for a pharmacist, a hundred thousand
04:34:50 19 or so?

04:34:50 20 **A** Yes.

04:34:50 21 **Q** You make about a half million dollars though yourself,
04:34:54 22 annually; is that right?

04:34:56 23 **A** My salary is not half a million dollars.

04:34:58 24 **Q** If you add your bonuses and stuff, I looked at your
04:35:01 25 personnel report, it was north of 400,000, wasn't it?

04:35:04 1 **A** When everything vests?

04:35:09 2 **Q** Yeah.

04:35:10 3 **A** Yes.

04:35:11 4 **Q** Thank you.

04:35:11 5 And you've had a career at Walgreens yourself?

04:35:18 6 **A** Yes.

04:35:18 7 **Q** How long did your husband work for them?

04:35:20 8 **A** 36 years.

04:35:22 9 **Q** Career man too?

04:35:24 10 **A** Yes.

04:35:24 11 **Q** Then your mother-in-law was there some and your

04:35:29 12 daughter was there some; is that fair?

04:35:31 13 **A** Yes.

04:35:31 14 **Q** Now, you've been there for 30-plus years, and you

04:35:37 15 spoke about pharmacists' concerns, but can we just assume

04:35:42 16 you're not really speaking for all the pharmacists at

04:35:45 17 Walgreens? Right?

04:35:49 18 **A** Sure.

04:35:49 19 **Q** And you don't know what all the concerns are of all

04:35:53 20 the pharmacists at Walgreens, right?

04:35:56 21 **A** Sure.

04:35:57 22 **Q** And if you were going to be totally candid with us

04:36:00 23 under oath, you would probably admit that there are some

04:36:05 24 really great pharmacists at Walgreens, right?

04:36:08 25 **A** Yes, we have great pharmacists.

04:36:09 1 **Q** Doing it right, day in, day out, working hard, great
04:36:14 2 customer service, protecting the communities, really good
04:36:17 3 people. Right?

04:36:19 4 **A** Yes.

04:36:19 5 **Q** And you also, in all candor, would admit there are
04:36:24 6 probably some that aren't all that hot, right?

04:36:28 7 **A** It is possible, yes.

04:36:29 8 **Q** All right. That's our stop at pharmacists.

04:36:33 9 Now we have a little longer delay at good faith
04:36:39 10 dispensing, okay?

04:36:41 11 **A** Okay.

04:36:41 12 **Q** Now, I want to start with this. You were asked a lot
04:36:58 13 of general questions. You were asked questions about
04:37:03 14 training for pharmacists.

04:37:04 15 Remember those?

04:37:05 16 **A** Yes.

04:37:05 17 **Q** You were asked questions about pharmacists doing their
04:37:08 18 job and doing it right.

04:37:11 19 Remember those?

04:37:12 20 **A** Yes.

04:37:12 21 **Q** You were asked questions about motivation and what
04:37:15 22 motivates a pharmacist and why they care.

04:37:19 23 Right?

04:37:20 24 **A** Yes.

04:37:20 25 **Q** You were asked questions about how pharmacists follow

04:37:23 1 good faith dispensing.

04:37:26 2 Right?

04:37:26 3 **A** Yes.

04:37:26 4 **Q** But you never told the jury about Megan Owens, did
04:37:30 5 you?

04:37:30 6 **A** I don't know specifically who Megan Owens is.

04:37:33 7 **Q** You never told them about Trudi-Ann Blackellar, did
04:37:38 8 you?

04:37:38 9 **A** No.

04:37:38 10 **Q** You never told them about Keri Kratofil, did you?

04:37:44 11 **A** She was on one of the e-mails that you showed me.

04:37:53 12 **Q** But how she fit in as a potential witness in the case
04:37:57 13 involving Walgreens that the DEA was filing, DOJ?

04:38:00 14 **A** I don't know. I didn't know that.

04:38:02 15 **Q** Yeah, you never told the jury about Caren Cohalla, did
04:38:07 16 you?

04:38:07 17 **A** No.

04:38:08 18 **Q** You never told the jury about Terry Collins, did you?

04:38:11 19 **A** No.

04:38:11 20 **Q** You never told them about Nancy Levi, did you?

04:38:14 21 **A** No.

04:38:14 22 **Q** Never told them about Cassie Mulvey, did you?

04:38:17 23 **A** No.

04:38:17 24 **Q** Never told them about Tara Kapavicus, did you?

04:38:21 25 **A** No.

04:38:21 1 **Q** Never told them about Shane Van Gordon, did you?

04:38:24 2 **A** No.

04:38:25 3 **Q** I ran out of room on the paper, but there's a host of

04:38:28 4 others you never told them about who have allegedly had

04:38:33 5 problems within the company, true?

04:38:36 6 **A** That's what you're telling me.

04:38:38 7 **Q** Well, did you do your research before you said all of

04:38:44 8 our pharmacists do great work?

04:38:47 9 **A** To my knowledge, our pharmacists do great work.

04:38:49 10 **Q** I thought you told me yesterday you never read the

04:38:52 11 order to show cause where the allegations were made about

04:38:55 12 what your pharmacists had done wrong.

04:38:57 13 **A** I didn't read the entire order to show cause, no.

04:39:00 14 **Q** So you did not read whether or not there were

04:39:04 15 pharmacists specifically --

04:39:06 16 MS. SWIFT: Objection, Your Honor.

04:39:08 17 THE COURT: Overruled.

04:39:09 18 **Q** -- specifically by name that weren't doing all of

04:39:13 19 these things you said to Ms. Swift were being done?

04:39:16 20 **A** I did not read it, no.

04:39:18 21 **Q** Okay. Now, you talked about the 2012 policy.

04:39:26 22 Do you remember that?

04:39:27 23 **A** Yes.

04:39:27 24 **Q** And you said, in answer to this question, "Why did you

04:39:34 25 decide to include these new bullet points in the good faith

04:39:40 1 dispensing policy? Why did you include the new changes.

04:39:43 2 And you talked about all the different things that y'all do
04:39:46 3 differently. Remember?

04:39:47 4 **A** Yes.

04:39:47 5 **Q** Well, the truth of the matter is there's another
04:39:49 6 reason why, isn't there, that you didn't tell the jury?

04:39:58 7 **A** And what would that be, Mr. Lanier?

04:39:59 8 **Q** Well, this new policy came out after y'all got the
04:40:03 9 order to show cause by Joe Rannazzisi involving problems
04:40:07 10 with your policies and the way they were being implemented,
04:40:10 11 right?

04:40:13 12 **A** I don't know when the order to show cause came.

04:40:15 13 **Q** You didn't bother to look at the order to show cause
04:40:18 14 in Exhibit 15, which is the last exhibit I believe you
04:40:22 15 testified about with Ms. Swift?

04:40:24 16 **A** You asked me if I read that. I did not.

04:40:28 17 **Q** There's a settlement and memorandum of agreement that
04:40:32 18 is Exhibit 15 that was entered into on behalf of the whole
04:40:36 19 country. Remember that?

04:40:37 20 **A** Yes.

04:40:38 21 **Q** And attached to it was an Appendix A. And the
04:40:41 22 Appendix A that's attached to Exhibit 15 talks about the
04:40:47 23 Walgreens Store 6094 that was allegedly refilling
04:40:54 24 prescriptions for controlled substances too early and had
04:40:56 25 allegedly filled prescriptions issued using expired DEA

04:41:02 1 registration numbers, and had dispensed controlled
04:41:06 2 substances to individuals that the store knew or should have
04:41:10 3 known were diverting the controlled substances.

04:41:13 4 Remember that?

04:41:15 5 **A** Yes.

04:41:15 6 **Q** And that was part of an administrative memorandum of
04:41:20 7 agreement that was entered into by the company in 2011,
04:41:29 8 isn't it?

04:41:29 9 **A** Yes.

04:41:30 10 **Q** And that is the agreement that caused the company to
04:41:32 11 rewrite their good faith dispensing as it came out in 2012,
04:41:36 12 isn't it?

04:41:37 13 **A** I don't know the answer to that, but, yes, the timing
04:41:42 14 that you're talking about is correct.

04:41:44 15 **Q** Okay. So when you say the reason we wrote it is
04:41:47 16 because we came across new information, well, what you did
04:41:50 17 is you entered into an agreement with the Department of
04:41:54 18 Justice for the United States of America, didn't you?

04:41:57 19 **A** We did.

04:42:06 20 **Q** And this is when you added the three-drug cocktail to
04:42:11 21 your policy to ensure your pharmacists were aware of it,
04:42:14 22 right?

04:42:14 23 **A** That's where we changed the terminology and we added
04:42:19 24 the word "cocktail," yes.

04:42:22 25 **Q** Well, now, this can be a lethal cocktail, can't you?

04:42:25 1 **A** Yes, when it's not used appropriately, yes.

04:42:28 2 **Q** And aren't pharmacists supposed to know about drugs'

04:42:32 3 side effects and their contraindications already?

04:42:35 4 **A** Yes.

04:42:35 5 **Q** Did you hire pharmacists that already knew that?

04:42:41 6 **A** Pharmacists know that in pharmacy school, yes.

04:42:44 7 **Q** And yet, there was a need to put it into the policy,

04:42:48 8 wasn't there?

04:42:48 9 **A** We did add it to the pharmacy policy -- or the policy

04:42:52 10 to make it more clear for them to understand what was

04:42:56 11 changing in the industry and how prescribing practices were

04:43:00 12 changing.

04:43:00 13 **Q** And then you were asked questions about contacting law

04:43:05 14 enforcement under the 2006 policies.

04:43:08 15 Remember that?

04:43:09 16 **A** Yes.

04:43:09 17 **Q** And it was pointed out to the jury and highlighted,

04:43:12 18 "If the prescriber informs the pharmacist that a

04:43:18 19 prescription for a controlled substance is not valid or

04:43:21 20 authorized, contact local law enforcement."

04:43:24 21 Do you see that?

04:43:25 22 **A** Yes. That's referring to forged prescriptions, yes.

04:43:28 23 **Q** It's referring to what?

04:43:29 24 **A** Forged prescriptions.

04:43:30 25 **Q** Forged prescriptions.

04:43:37 1 "Because on the backside of this policy," unread to
04:43:40 2 the jury," is something that's different about Oklahoma
04:43:45 3 stores."

04:43:45 4 Do you see that?

04:43:46 5 **A** Yes.

04:43:46 6 **Q** "In Oklahoma, if notified by a prescriber about an
04:43:51 7 allegedly illegal activity involving a controlled substance,
04:43:57 8 please contact your local police department immediately."

04:43:59 9 Do you see that?

04:44:00 10 **A** Yes.

04:44:00 11 **Q** That would be a pretty good policy to have in Ohio,
04:44:03 12 wouldn't it?

04:44:03 13 **A** What's different between that and the previous page --

04:44:11 14 **Q** The previous page only deals with --

04:44:14 15 MS. SWIFT: Objection. She wasn't done with
04:44:15 16 her answer.

04:44:16 17 **Q** I'm sorry.

04:44:17 18 MR. LANIER: I apologize, Judge. I didn't
04:44:19 19 understand.

04:44:19 20 THE COURT: That's okay.

04:44:20 21 **A** The previous page is talking about when they call the
04:44:23 22 prescriber and the prescriber says, I did not write this
04:44:26 23 prescription.

04:44:26 24 **Q** Right, forged?

04:44:27 25 **A** Yes.

04:44:27 1 **Q** But this is not just that. This is "illegal
04:44:34 2 activity." So perhaps you're notified by a prescriber that
04:44:36 3 it's not a forged -- it's not a forged prescription, but the
04:44:41 4 doctors found out that another doctor had written, or the
04:44:45 5 doctors found out that, you know, any number of things that
04:44:48 6 doctors may find out.

04:44:49 7 Do you see that?

04:44:50 8 **A** Yes.

04:44:50 9 **Q** And so in Oklahoma, you all put in bold print Oklahoma
04:44:56 10 stores, right?

04:44:57 11 **A** Yes.

04:44:59 12 **Q** And then say in Oklahoma -- I mean, don't you think
04:45:01 13 that's a better policy just to say in the United States of
04:45:08 14 America?

04:45:08 15 **A** So if a state board of pharmacy changes any type of a
04:45:13 16 regulation that needs to be called out, it will be called
04:45:15 17 out on that. But we never told our pharmacists that they
04:45:18 18 shouldn't or couldn't contact law enforcement for any
04:45:22 19 prescription that they felt had illegal activity.

04:45:27 20 **Q** Ma'am, it doesn't say that here. This doesn't say,
04:45:31 21 hey, the state board of pharmacy may want you to do that,
04:45:37 22 but we don't tell you if you could or couldn't.

04:45:40 23 What you've done here is singled out Oklahoma for --

04:45:44 24 **A** I see that.

04:45:45 25 **Q** -- this treatment.

04:45:45 1 **A** Yes.

04:45:46 2 **Q** Why didn't you single out Ohio?

04:45:49 3 **A** I don't know the reason for that specific entry, but I
04:45:51 4 can tell you from practice that I've had in the past when a
04:45:57 5 board of pharmacy has a specific regulation that we need to
04:46:00 6 call out by the state, but in no way are we telling our
04:46:03 7 pharmacists anywhere in that policy that they cannot contact
04:46:05 8 local law enforcement for any prescription that they want
04:46:09 9 to.

04:46:12 10 **Q** We'll look in a little bit at this box of refusals to
04:46:15 11 fill. I think there are like 640 something in there by our
04:46:20 12 count.

04:46:20 13 How many times do you think y'all contacted law
04:46:23 14 enforcement on those?

04:46:23 15 **A** I don't know the answer to that.

04:46:32 16 **Q** Now, on those policies, by the way, that y'all sent
04:46:35 17 out, those good faith dispensing policies in 1998, remember
04:46:44 18 those?

04:46:44 19 **A** Yes.

04:46:45 20 **Q** Do you do stuff with your hands, like tools and things
04:46:52 21 like that? Do you build?

04:46:53 22 **A** I don't build things.

04:46:56 23 **Q** Okay. Do you cook?

04:46:58 24 **A** I do.

04:46:58 25 **Q** Like what kind of stuff do you like to cook?

04:47:01 1 **A** All kinds of things. Dinners, salads.

04:47:09 2 **Q** All right. Let's say you got to cook and the recipe

04:47:14 3 says dice an onion to saute it, okay?

04:47:19 4 **A** Okay.

04:47:23 5 **Q** It will help to have a knife, won't it?

04:47:25 6 **A** Yes.

04:47:26 7 **Q** You can have the instructions, but if you don't have

04:47:29 8 the tools, makes it hard to get it done, doesn't it?

04:47:33 9 **A** Yes.

04:47:34 10 **Q** Do you think for a moment that your store -- that your

04:47:39 11 company was giving the pharmacists all of the tools they

04:47:43 12 needed to do these bullet points?

04:47:48 13 **A** I think our company was giving the tools to the best

04:47:51 14 of our ability. Was this back in 1998?

04:47:55 15 **Q** Yes, ma'am.

04:47:55 16 **A** Yes.

04:47:56 17 **Q** To the best of your ability, really?

04:47:59 18 **A** Yeah, I do.

04:48:00 19 **Q** Because even if we fast forward and look at what it

04:48:03 20 was in 2012, '13 when you took over --

04:48:07 21 **A** Yes.

04:48:07 22 **Q** -- your company wasn't giving you the electronic

04:48:10 23 refusals to fill for seven years, right?

04:48:14 24 **A** Correct. But we had an operational program in place

04:48:19 25 for that.

04:48:19 1 **Q** Ma'am, you said "to the best of our ability."

04:48:24 2 Do you remember that?

04:48:24 3 **A** Yes.

04:48:24 4 **Q** To the best of your ability, do you really want to say

04:48:28 5 that under oath, that you all gave those tools to the best

04:48:33 6 of your ability?

04:48:33 7 **A** And I explained why we did not have that, because we

04:48:36 8 were changing computer systems.

04:48:39 9 **Q** Ma'am, to the best of your ability, do you think you

04:48:43 10 gave those tools to those pharmacists --

04:48:45 11 **A** Yeah.

04:48:46 12 **Q** -- as soon as you could?

04:48:47 13 **A** I did, and I'll tell you why. Because a computer

04:48:51 14 enhancement takes a long time to put in place, so I would

04:48:54 15 not have been able to put that target drug good faith

04:48:58 16 dispensing checklist in place immediately. It took months

04:49:02 17 and months and months to put that into an electronic format.

04:49:05 18 **Q** Well, let's look at a test of that with beyond just

04:49:09 19 the computer system. Let's look at the training that was

04:49:12 20 involved.

04:49:13 21 Was your company training to the best of its ability?

04:49:19 22 **A** We trained our pharmacists.

04:49:22 23 **Q** Wasn't my question.

04:49:23 24 Was the company training to the best of its ability?

04:49:29 25 **A** My testimony is, yes, I felt that we were doing good

04:49:34 1 work and doing good things for our pharmacists.

04:49:36 2 Q So when you noted that "there was no periodic training
04:49:40 3 for dispensing in 2010" -- that's Plaintiffs' Exhibit
04:49:46 4 1956 --

04:49:47 5 A Yes.

04:49:47 6 Q -- "no such training exists today."

04:49:51 7 Do you think you were training to the best of your
04:49:53 8 ability?

04:49:53 9 A We did because we trained our pharmacists on hire --

04:49:56 10 Q Could you have done periodic training of all
04:49:59 11 Walgreens' retail employees for dispensing controlled
04:50:04 12 substances?

04:50:04 13 A We could have.

04:50:04 14 Q You could have?

04:50:05 15 A Yeah.

04:50:05 16 Q And the fact that you did not sort of indicates you
04:50:09 17 weren't doing it to the best of your ability, doesn't it?

04:50:15 18 A I think we were doing the job that we were doing, we
04:50:18 19 were hiring our pharmacists, we were training them.

04:50:21 20 We could have done periodic training. We did not have
04:50:25 21 periodic training in place in 2010.

04:50:26 22 Q And not only that, you agreed with the DEA to change
04:50:30 23 things in 2011, didn't you?

04:50:33 24 A Yes.

04:50:34 25 Q Doesn't that tell you that maybe you weren't doing

04:50:37 1 them to the best of your ability?

04:50:38 2 **A** To the best of the DEA's expectation, yes.

04:50:44 3 **Q** Weren't -- no, weren't doing them to the best of your
04:50:48 4 ability. Y'all were able to do better and agreed with the
04:50:53 5 DEA you would do better. True?

04:50:56 6 **A** True.

04:50:56 7 **Q** And then the game changed in 2013, didn't it?

04:51:02 8 **A** Yes.

04:51:04 9 **Q** And that game change was another DEA problem, the
04:51:12 10 second one, right?

04:51:13 11 **A** Yes.

04:51:13 12 **Q** And that showed you some other areas where Walgreens
04:51:17 13 was not doing it to the best of its ability, correct?

04:51:20 14 **A** Yes.

04:51:21 15 **Q** And as a result, entered into a massive settlement
04:51:25 16 agreement with the DEA, true?

04:51:30 17 **A** Yes.

04:51:30 18 **Q** And then there are audit problems in 2014, true?

04:51:37 19 **A** Yes.

04:51:37 20 **Q** Which tells you that the company's not doing it to the
04:51:41 21 best of its ability in 2014, right?

04:51:43 22 **A** It's telling me that the stores are not following
04:51:47 23 through with the expectations of the policies.

04:51:51 24 **Q** And that has got to be a reflection of either hiring
04:51:56 25 bad people, not training people properly, not giving them

04:51:59 1 the tools, something associated with why it was happening,
04:52:04 2 right?

04:52:06 3 **A** Yes.

04:52:08 4 **Q** And so the store wasn't doing this to the best of its
04:52:11 5 ability in 2014, the company wasn't, was it?

04:52:14 6 **A** The store was not following through, and the audit
04:52:18 7 showed it. And we made changes accordingly.

04:52:22 8 **Q** And then in 2015 there were still audit problems,
04:52:26 9 weren't there?

04:52:28 10 **A** Yes. We do follow-ups to ensure that our policies are
04:52:31 11 being followed.

04:52:32 12 **Q** And in that regard, you were asked about Exhibit 15,
04:52:45 13 and specifically in Exhibit 15, that's the settlement
04:52:50 14 agreement.

04:52:51 15 Do you remember that?

04:52:51 16 **A** Yes.

04:52:51 17 **Q** You were asked by Ms. Swift on page 5, section B.
04:53:13 18 Let's go back and do it off the e-mail. I think
04:53:15 19 that's the easier way to do it.

04:53:16 20 You were asked off the e-mail about Section 5.

04:53:29 21 Specifically you were asked, "I will only put the
04:53:32 22 sections we need to work on."

04:53:34 23 Do you remember that?

04:53:35 24 **A** Yes.

04:53:35 25 **Q** And so on page 5 -- all right, my copy -- you may get

04:53:51 1 out of this question because my copy's not finding the page.

04:53:54 2 Ma'am, do you remember where Ms. Platts indicated --

04:54:03 3 tell you what, it's going to be in my stack of stuff here,

04:54:06 4 and we're going to come to it later, and if not -- oh, here

04:54:10 5 it is. Yes.

04:54:11 6 Section B you were asked about. Do you remember this?

04:54:19 7 **A** Yes.

04:54:20 8 **Q** Ms. Platts said, "This program shall include
04:54:23 9 procedures to identify the common signs associated with
04:54:27 10 diversion, including, but not limited to, doctor shopping
04:54:30 11 and requests for early refills."

04:54:32 12 Ms. Platts said, "I could not find anything in our
04:54:38 13 procedures that addressed this request."

04:54:40 14 **A** That's what she said.

04:54:42 15 **Q** And you're telling the jury, oh, no, it was in there,
04:54:45 16 she just couldn't find it, right?

04:54:46 17 **A** It was in our policy. She was not looking at a
04:54:49 18 policy.

04:54:49 19 **Q** Which tells you that even Debbie Platts, who's in
04:54:52 20 charge of some of this stuff, doesn't know what the policies
04:54:55 21 are, doesn't it?

04:54:55 22 **A** She did not know it was in the policy, correct.

04:54:59 23 **Q** And what was her job?

04:55:01 24 **A** She was divisional healthcare supervisor.

04:55:12 25 **Q** And if a divisional healthcare supervisor doesn't know

04:55:16 1 what's in the policies, don't you think you can do better?

04:55:22 2 **A** Well, the divisional healthcare supervisor should know at a high level, I would agree; however, they're not dispensing the prescriptions.

04:55:29 5 **Q** Wasn't my question, ma'am.

04:55:31 6 If the divisional healthcare supervisor doesn't know, don't you think you can do better?

04:55:38 8 **A** Okay.

04:55:42 9 **Q** Next, calling the doctor in 1998 was not deemed adequate anymore.

04:55:59 11 Remember?

04:55:59 12 **A** Yes.

04:55:59 13 **Q** That was the policy in 1998, wasn't it?

04:56:02 14 **A** Yes.

04:56:03 15 **Q** And the policy didn't change until when?

04:56:08 16 **A** I don't know the exact date that the policy changed, but I bet you've got it in front of you there that you can remind me.

04:56:15 19 **Q** Well, I'll bet that you put it into a PowerPoint where you said calling the doctor is no longer adequate anymore.

04:56:21 21 **A** I did. When we were going through the changes of what was happening in the industry, we did discuss that with our field leaders.

04:56:29 24 **Q** Was it about 2013?

04:56:31 25 **A** January of 2013, correct.

04:56:33 1 **Q** And so while the epidemic rages -- we looked at it
04:56:39 2 from a PowerPoint from 2000 to 2009 -- your company policy
04:56:45 3 is calling the doctor is adequate. But the truth of the
04:56:50 4 matter is it never should have been considered adequate,
04:56:53 5 should it?

04:56:53 6 **A** I believe you're taking the calling the doctor a bit
04:56:57 7 out of context but --

04:57:00 8 **Q** Well, we can look at it.

04:57:02 9 **A** I know we can, but you were not in the meeting, you
04:57:05 10 were not there when I discussed it with the field, and you
04:57:07 11 were not there when I explained to the field leaders why and
04:57:10 12 what the process was for validating a prescription and
04:57:13 13 ensuring that the pharmacist is doing their corresponding
04:57:18 14 responsibility.

04:57:18 15 **Q** Now, Ms. Polster, when you proposed that you would
04:57:21 16 need a full team complement of 12 for each region --

04:57:27 17 **A** No.

04:57:27 18 **Q** I mean, 12 total, that you needed a full team
04:57:31 19 complement for each region, right?

04:57:32 20 You didn't get permission to hire all 12 at once
04:57:35 21 because of budget concerns, true?

04:57:38 22 **A** No, I did get permission when --

04:57:40 23 **Q** You were not able to fill all of those jobs at once
04:57:43 24 because of budget considerations, right?

04:57:45 25 **A** I don't remember budget consideration, but I was

04:57:48 1 allowed to hire, and I did get my full complement.

04:57:52 2 Q Eventually, within -- but it took six months? How
04:57:56 3 long did it take?

04:57:56 4 A It might have. It takes a while to find good
04:57:59 5 candidates, yes.

04:57:59 6 Q Well, it wasn't to find good candidates. At first you
04:58:03 7 don't recall the budget issue?

04:58:04 8 A I recall requesting -- a request for head count, which
04:58:08 9 is the normal procedures that go into place. When you're
04:58:11 10 adding additional head count to a team, you have to get
04:58:14 11 approval to do that.

04:58:16 12 But I was allowed to hire prior to that.

04:58:21 13 Q They just weren't allowed to start working until --

04:58:23 14 A It's just I was in the process of hiring,
04:58:27 15 interviewing, finding the right candidates.

04:58:28 16 Q Let me -- I don't have that with me. We'll look at
04:58:40 17 that in a moment, if I've got time.

04:58:42 18 Now, in this regard, I have a question. You talked
04:58:48 19 when pharmacists get fired, remember?

04:58:53 20 A Yes.

04:58:53 21 Q You said they get fired for not following the law,
04:58:55 22 right?

04:58:57 23 A Yes.

04:58:58 24 Q And so you can tell us which got fired after the
04:59:03 25 memorandum of authority, right?

04:59:05 1 **A** I cannot tell you who specifically --

04:59:09 2 **Q** Memorandum of agreement.

04:59:11 3 **A** -- has been fired, no.

04:59:13 4 **Q** Order to show cause, can you tell us which ones got

04:59:16 5 fired?

04:59:17 6 **A** I can't tell you any specific pharmacist. We have a

04:59:21 7 discipline process in our company that is a step discipline

04:59:24 8 process through verbal, written, and final written, and then

04:59:30 9 termination. We have that policy in place for our people.

04:59:43 10 **Q** Now, as we look at the memorandum of agreement --

04:59:49 11 remember that?

04:59:49 12 **A** Yes.

04:59:49 13 **Q** That's something where y'all had to follow those

04:59:57 14 agreements, right?

04:59:57 15 **A** Yes.

04:59:58 16 **Q** And so you stated in reference to the memorandum of

05:00:05 17 agreement that the company executed those pieces that you

05:00:09 18 spoke of, right?

05:00:10 19 **A** Yes.

05:00:10 20 **Q** But the company didn't execute everything perfectly,

05:00:14 21 did it?

05:00:15 22 **A** Oh, there's always something that we may find later

05:00:18 23 that we need to improve on, yes.

05:00:20 24 **Q** Well, yeah, I mean, we can just look at the 2011

05:00:23 25 agreement and see that y'all got into more trouble again,

05:00:27 1 you had to enter into another agreement in 2013, right?

05:00:30 2 MS. SWIFT: Objection, Your Honor.

05:00:31 3 THE COURT: Overruled.

05:00:32 4 **A** Yes.

05:00:32 5 **Q** Now, the sentences that are in here that you say y'all
05:00:39 6 were already doing, do you remember those sentences?

05:00:42 7 **A** I remember discussing that.

05:00:43 8 **Q** Why do most of those sentences have such long or more
05:00:50 9 than one explanation if there are delivered policies and
05:00:57 10 procedures already?

05:00:57 11 **A** You'll have to be specific. I'm not understanding
05:00:59 12 your question.

05:01:00 13 **Q** Well, I'm -- I didn't write the question, but I think
05:01:04 14 I understand it. I'm going to give it a shot.

05:01:11 15 The administrative memorandum of agreement, for
05:01:16 16 example. And I've pulled the one from 2011. Okay?

05:01:22 17 **A** Okay.

05:01:23 18 **Q** 2011 one. "Walgreens agrees to maintain a compliance
05:01:30 19 program to detect and prevent diversion as required."

05:01:33 20 Do you see that?

05:01:34 21 **A** Yes.

05:01:34 22 **Q** Now, if that's already being done, the sentence could
05:01:37 23 stop there, couldn't it?

05:01:40 24 **A** Yes.

05:01:40 25 **Q** But instead, the sentence -- or the paragraph goes on.

05:01:46 1 "This program shall include," and y'all are given
05:01:50 2 "procedures to identify the common signs associated with the
05:01:52 3 diversion of controlled substances, "including, but not
05:01:56 4 limited to, doctor shopping and requests for early refills."
05:01:59 5 It goes on to talk about what the program will include about
05:02:02 6 routine and periodic training.

05:02:04 7 You see all of that?

05:02:05 8 **A** Yes.

05:02:05 9 **Q** I mean, if y'all were already doing that, those are
05:02:08 10 pretty irrelevant sentences, aren't they?

05:02:11 11 **A** Well, if they didn't have the exact words the DEA was
05:02:13 12 looking for, they had every right to tell us what they
05:02:16 13 thought should be added in there.

05:02:17 14 **Q** All right. By the way, on firing people, if Walgreens
05:02:32 15 is going to fire a registered pharmacist who violates the
05:02:35 16 law, what does the investigation process look like?

05:02:40 17 **A** I can tell you high level, if it comes through a
05:02:44 18 hotline, it would go through our compliance department. If
05:02:47 19 it goes through our district leaders, it would go through a
05:02:53 20 process of a verbal warning, a written warning, a final
05:02:58 21 written warning, and then a termination.

05:03:02 22 **Q** And this process, what does Walgreens identify as
05:03:10 23 warning signs?

05:03:11 24 **A** It's going to change by instance. I wouldn't be able
05:03:14 25 to tell you a specific.

05:03:17 1 **Q** All right. Now, Plaintiffs' Exhibit 19927 is your
05:03:35 2 personnel file.

05:03:37 3 Do you remember we talked about that yesterday in the
05:03:39 4 early, early going?

05:03:41 5 **A** Yes.

05:03:41 6 **Q** I blacked out your e-mail address, your phone numbers,
05:03:44 7 and your physical address, so anybody who's in court can't
05:03:50 8 call you. All right?

05:03:51 9 **A** Okay.

05:03:51 10 **Q** But there's something I didn't black out, and that's
05:03:54 11 the comments on page 31.

05:03:57 12 Can you read that?

05:03:58 13 **A** Yes.

05:04:01 14 **Q** "Natasha Polster, (self). 9 out of the 12 employees
05:04:08 15 were hired for the team before the hiring freeze came down."

05:04:11 16 Do you see that?

05:04:12 17 **A** Yes.

05:04:15 18 **Q** So when I asked you if you recall whether or not you
05:04:17 19 were able to hire all 12 immediately and you said yes, does
05:04:21 20 this refresh your recollection that maybe 9 out of the 12
05:04:25 21 were hired and then there was a hiring freeze?

05:04:28 22 **A** You're right.

05:04:29 23 MS. SWIFT: Objection. Mischaracterizes.

05:04:30 24 MR. LANIER: She just said I was right.

05:04:32 25 THE COURT: Overruled.

05:04:33 1 **A** You're right. I forgot about the hiring freeze that
05:04:35 2 happened. I did not feel that I was not supported in
05:04:39 3 getting that full team. We were able to do what we needed
05:04:41 4 to do.

05:04:42 5 **Q** I understand. It's just it was a question from the
05:04:44 6 jury that I was asking you.

05:04:45 7 **A** That's fair.

05:04:49 8 **Q** Now, here is, then, Plaintiffs' Exhibit 20639. And
05:04:56 9 this is the one that tells us what your policy really was
05:04:59 10 before this DEA agreement, doesn't it?

05:05:03 11 **A** That is my speaker notes that I referred to when I
05:05:11 12 gave the presentation, yes.

05:05:12 13 **Q** Well, you not only referred to them, you type them
05:05:15 14 into the computer, don't you?

05:05:16 15 **A** Well, I typed them into my computer, yes, or the notes
05:05:19 16 that my team gave. I don't know who gave this one.

05:05:21 17 **Q** Well, you type them in. You said they were your
05:05:26 18 notes. "We have learned more about the DEA's expectations
05:05:32 19 around good faith dispensing."

05:05:34 20 **A** Yes.

05:05:34 21 **Q** "We felt the steps we were taking did not go far
05:05:37 22 enough."

05:05:39 23 Do you see that?

05:05:39 24 **A** Yes.

05:05:39 25 **Q** Do you really think you were doing the best you could

05:05:43 1 when your steps didn't go far enough?

05:05:44 2 **A** With the information that we had prior to all of that,

05:05:47 3 yes.

05:05:47 4 **Q** Well, even you believe that by this point in time --

05:05:51 5 this is 2013 -- by this point in time you think the pain

05:05:56 6 clinics have been shut down and y'all are seeing this

05:06:00 7 onslaught of new prescriptions.

05:06:03 8 Remember?

05:06:04 9 **A** Yes.

05:06:04 10 **Q** And then, "The game has changed. We can no longer

05:06:11 11 rely on the, quote, I spoke to the prescriber and he or she

05:06:15 12 said it was okay."

05:06:18 13 **A** That's right.

05:06:19 14 **Q** Well, you could have made that change years before,

05:06:22 15 couldn't you?

05:06:23 16 **A** We could have, and we didn't change the actual
05:06:26 17 verbiage, but that didn't mean that the pharmacist wasn't
05:06:30 18 checking through and doing their good faith dispensing.

05:06:33 19 Our policy did not change the words, but we supported
05:06:36 20 our pharmacists. When they called and talked to the
05:06:40 21 prescriber and the prescriber said that they wrote the
05:06:44 22 prescription but they still felt that they shouldn't fill
05:06:46 23 it, our pharmacists were supported to not fill the
05:06:49 24 prescription.

05:06:50 25 **Q** And then Ms. Swift asked you about slide number 10 on

05:06:57 1 that slide deck.

05:06:57 2 **A** Yes.

05:06:58 3 **Q** And what you meant by your notes down below.

05:07:04 4 Remember?

05:07:05 5 **A** Yes.

05:07:05 6 **Q** You said to these businesspeople, "Realistically,
05:07:10 7 bottom line, yes, sales are going to be impacted."

05:07:13 8 **A** Yes.

05:07:14 9 **Q** "How is this going to impact my sales, what's it going
05:07:18 10 to do to my good customers' numbers so we can address the
05:07:23 11 issue without significantly impacting our other business."

05:07:27 12 [As read]

05:07:30 13 Do you see that?

05:07:30 14 **A** Yes.

05:07:30 15 **Q** And you can say what that means, but the bottom line
05:07:33 16 is is you're having to address how this is going to impact
05:07:38 17 sales, aren't you?

05:07:39 18 **A** Yes, I am explaining to the field leaders that we are
05:07:41 19 expecting for them to support their pharmacists to not fill
05:07:45 20 prescriptions if the pharmacists feel that they shouldn't
05:07:47 21 fill it.

05:07:49 22 **Q** All right. And then you were asked about the poll,
05:07:53 23 the audit information. Remember those questions?

05:07:56 24 **A** Refresh me which one you're talking about.

05:07:59 25 **Q** Yes, ma'am. You gave the BCI executive summary?

05:08:01 1 **A** Yes.

05:08:01 2 **Q** And said -- I think you said --

05:08:03 3 **A** These were the questions that those loss prevention

05:08:06 4 people did, yes.

05:08:07 5 **Q** Yeah, here's the way Ms. Swift asked the question. I

05:08:11 6 tried to write it down word for word.

05:08:12 7 She said, "That sounds pretty good. Were you happy

05:08:16 8 with these results?"

05:08:18 9 Do you remember that?

05:08:18 10 **A** Yes.

05:08:19 11 **Q** Let's leave no question about it. You were not happy

05:08:23 12 with these results, were you?

05:08:24 13 **A** I was not happy that we were not a hundred percent.

05:08:27 14 **Q** Not only that, you were in -- you were very concerned

05:08:32 15 about these results because they're bad results. True?

05:08:35 16 **A** I was concerned that we did not have a hundred percent

05:08:38 17 execution, yes.

05:08:39 18 **Q** Well, we go a step further than that.

05:08:43 19 MR. LANIER: If we show, please, Rachel and

05:08:50 20 Maria, Plaintiffs' 20803.

05:09:08 21 **Q** Do you have that document in front of you?

05:09:10 22 **A** I do.

05:09:10 23 **Q** Do you remember this document?

05:09:11 24 **A** Yes.

05:09:11 25 **Q** This is the one that's got on the front page your

05:09:14 1 e-mail.

05:09:16 2 **A** Yes.

05:09:17 3 **Q** "Okay, guys, put your seat belts on."

05:09:21 4 **A** Yes.

05:09:21 5 **Q** "I had a brief hallway discussion with Scott Jonkman

05:09:26 6 the other day about how these audits were going, and he said

05:09:32 7 they are not going great."

05:09:34 8 **A** Yes.

05:09:34 9 **Q** Ms. Swift --

05:09:39 10 **A** I had not seen --

05:09:41 11 **Q** -- "that sounds pretty good, were you happy with these

05:09:44 12 results?"

05:09:44 13 **A** I had not seen the results -- when I talked to Scott,

05:09:48 14 he had not gotten all the results back.

05:09:51 15 **Q** Ma'am, I haven't asked my question.

05:09:52 16 **A** Sorry.

05:09:53 17 **Q** That's okay.

05:09:53 18 Ms. Swift: "That sounds pretty good. Were you happy

05:09:56 19 with these results" is a bit in contrast to you, "okay,

05:10:01 20 guys, put your seat belts on. I had a brief discussion. He

05:10:04 21 said they're not going great."

05:10:06 22 Different spin, right?

05:10:07 23 **A** Yes.

05:10:07 24 **Q** "Given this bit of news, that concerns me. We will

05:10:13 25 have to get a mitigation plan together on what we will do

05:10:17 1 with the results to satisfy the MOA for any noncompliance."

05:10:24 2 Do you see that?

05:10:25 3 **A** Yes.

05:10:25 4 **Q** Because what you were doing there was part of the
05:10:28 5 agreement you'd entered into with the DEA, right?

05:10:32 6 **A** What I was doing in terms of the BCI was following up
05:10:35 7 to ensure that we were compliant.

05:10:38 8 **Q** Exactly.

05:10:39 9 **A** There was a piece in the MOA that said that we had
05:10:45 10 compliance checks in place. That was one of them. We did
05:10:48 11 not get a hundred percent compliance.

05:10:51 12 And when Scott talked to me in the hallway, he had
05:10:56 13 said, you know, we're getting results back, we're not seeing
05:11:00 14 a hundred percent compliance, that concerned me, yes.

05:11:01 15 **Q** And when Ms. Swift asked you whether or not the DEA
05:11:07 16 ever reported it or got written up or something like that,
05:11:12 17 do you remember those questions?

05:11:15 18 Did the DEA ever tell you you weren't in compliance?

05:11:19 19 MS. SWIFT: Objection. I don't recall asking
05:11:20 20 that question.

05:11:20 21 MR. LANIER: I think she did, but I'll ask it
05:11:22 22 a different way.

05:11:23 23 THE COURT: Overruled. Overruled.

05:11:25 24 **Q** Do you remember being asked about whether or not the
05:11:27 25 DEA ever said y'all weren't compliant?

05:11:30 1 **A** I don't remember that question.

05:11:32 2 **Q** Well, let's make it real clear.

05:11:33 3 **A** Okay.

05:11:34 4 **Q** You never sent the BCI results to the DEA, did you?

05:11:38 5 **A** No, but we don't send results of audits to the DEA.

05:11:40 6 **Q** You never sent the results of an audit to see if

05:11:44 7 you're complying with the agreement you had with the

05:11:47 8 Department of Justice that showed you did not comply with

05:11:47 9 it?

05:11:47 10 MS. SWIFT: Objection.

05:11:53 11 **Q** You didn't send that, did you?

05:11:55 12 **A** We don't send that information to the DEA.

05:11:57 13 **Q** So the DEA doesn't come scold you for being

05:12:00 14 noncompliant -- here, let's get the wording exactly right.

05:12:02 15 "Has the DEA ever put you on notice that it believed

05:12:07 16 Walgreens was not in compliance with this agreement?"

05:12:11 17 Now do you remember being asked?

05:12:13 18 **A** Were we talking about the 2013 agreement?

05:12:15 19 **Q** Yes, ma'am.

05:12:16 20 Now do you remember being asked?

05:12:18 21 **A** Yes, that was my understanding, yes.

05:12:20 22 **Q** Well, you never told the DEA y'all were failing in

05:12:26 23 compliance, did you?

05:12:28 24 MS. SWIFT: Objection.

05:12:29 25 THE COURT: Overruled.

05:12:29 1 **A** We don't send compliance audit information to the DEA.

05:12:39 2 **Q** In fact, even -- well --

05:12:46 3 "We'll have to get a mission together about what we'll

05:12:50 4 do with the results to satisfy the memorandum of agreement

05:12:53 5 for any noncompliance we may have seen from the audit. I do

05:12:58 6 not want to miss valuable working time, so as soon as we get

05:13:01 7 this, I would like you guys to get started on a

05:13:03 8 recommendation. I'm anticipating the worst. I hope the

05:13:06 9 results are not as bad as I'm thinking they will be."

05:13:11 10 Do you see that?

05:13:11 11 **A** Yes.

05:13:11 12 **Q** Then the reply. "I can only imagine what we're going

05:13:16 13 to find out. Scott told me a few stores had broken C-II

05:13:19 14 cabinets that didn't lock and never submitted a service

05:13:24 15 ticket to get them fixed."

05:13:26 16 **A** Yes.

05:13:27 17 **Q** Do you see that?

05:13:28 18 **A** Yes.

05:13:28 19 **Q** Huge problem, isn't it?

05:13:31 20 **A** It is a concern. We definitely want to make sure that

05:13:33 21 our narcotic cabinets had working locks, yes.

05:13:37 22 **Q** Not it is a concern. It's illegal, isn't it?

05:13:41 23 **A** It is illegal that a controlled substance cabinet is

05:13:44 24 not locked, yes.

05:13:45 25 **Q** Yeah. So it's not, well, it's a bit of a concern.

05:13:48 1 It's not a bit of a concern or a concern, it's wrong, isn't
05:13:55 2 it?

05:13:55 3 **A** Yes, we -- and we took steps to ensure that we don't
05:13:58 4 have controlled substance cabinets anymore. We went to
05:14:00 5 safes.

05:14:02 6 **Q** Your reply?

05:14:04 7 **A** Yes.

05:14:05 8 **Q** "Sigh, dot, dot, dot, dot"?

05:14:07 9 **A** I was extremely disappointed. Our pharmacy managers
05:14:10 10 should know that they need to get that corrected
05:14:12 11 immediately.

05:14:14 12 **Q** And so then we look at the executive summary of this.

05:14:19 13 Do you see this?

05:14:20 14 **A** Yes.

05:14:20 15 **Q** Now, not making your PowerPoint at all was issue
05:14:24 16 number 1, "Number of C-II prescription that are not
05:14:30 17 stickered."

05:14:31 18 They're all supposed to be stickered, aren't they?

05:14:33 19 **A** So things have changed with the memorandum of
05:14:35 20 agreement, and we did not have to sticker controlled
05:14:40 21 substances, and we did have to change that practice. And
05:14:42 22 that was the beginning of the change.

05:14:44 23 **Q** No, ma'am, are you saying under the agreement you did
05:14:47 24 not have to sticker?

05:14:49 25 **A** So, no, no, we did once the agreement came into place.

05:14:54 1 **Q** That's my point.

05:14:55 2 So as of 2013 when the agreement comes into place, you

05:14:58 3 have to sticker, right?

05:15:00 4 **A** Yes.

05:15:00 5 **Q** And so this is another area where y'all were not in

05:15:04 6 compliance with the agreement, because you had a number of

05:15:07 7 stores that failed to sticker once, a number 10 or less, and

05:15:14 8 a number 11 or more.

05:15:15 9 Do you see that?

05:15:15 10 **A** I do.

05:15:16 11 **Q** And those numbers look, well, you know, what's one?

05:15:21 12 But this is just from a random file folder.

05:15:25 13 Do you see that?

05:15:26 14 **A** Yes.

05:15:26 15 **Q** It's not examining every one, is it?

05:15:29 16 **A** Correct.

05:15:29 17 **Q** And you had C-III and IV prescriptions, and that's

05:15:38 18 where hydrocodone was at the time, true?

05:15:40 19 **A** I don't remember the year that it went to Schedule II,

05:15:43 20 but yes.

05:15:43 21 **Q** 2014, does that ring a bell?

05:15:45 22 **A** Thank you.

05:15:46 23 And when was this audit done, '15?

05:15:49 24 **Q** It's written up -- I think it was done in '14, but

05:15:55 25 you've got an internal audit report. I don't want to

05:15:57 1 misrepresent it. I'm not positive.

05:15:58 2 **A** Okay.

05:15:58 3 **Q** But you've still got controlled substances there,
05:16:01 4 don't you, Schedule III?

05:16:03 5 **A** Yes.

05:16:03 6 **Q** Those were supposed to be stickered under the
05:16:08 7 agreement, right?

05:16:09 8 **A** Yes.

05:16:09 9 **Q** And those have got stores that don't comply, correct?

05:16:12 10 **A** Yes.

05:16:13 11 **Q** So that you've got 35 percent not complying with the
05:16:18 12 DEA there. And again, that's just from a random sample.

05:16:21 13 That's not looking at every one, right?

05:16:23 14 **A** Yes.

05:16:23 15 **Q** So you've got 35 percent not complying with the DEA
05:16:27 16 here, you've got 10.5 percent not complying here, you've got
05:16:36 17 a problem of several percent, that's a rounding error, 2.9
05:16:40 18 percent maybe, not complying there. You've got 40.5 percent
05:16:47 19 not complying here.

05:16:52 20 And by the way, you can say, well, but it's just --
05:16:55 21 you know, it wasn't a lot of noncompliance, right?

05:17:01 22 **A** I agreed that we should have had compliance, and I
05:17:05 23 took action to work on that.

05:17:06 24 **Q** I just don't want it minimized for the jury by
05:17:09 25 Ms. Swift in asking you questions.

05:17:12 1 MS. SWIFT: Objection, Your Honor.

05:17:13 2 Q This idea that -- no, this idea of the question being,
05:17:16 3 you know, that's pretty good, isn't it? It's not.

05:17:20 4 A For that one question, she was pointing out that. But
05:17:25 5 we want a hundred percent compliance. That's the point.

05:17:27 6 Q That's the law.

05:17:29 7 MS. SWIFT: Objection. Argumentative.

05:17:31 8 MR. LANIER: Okay, I'll pull it down, Judge.

05:17:33 9 THE COURT: I'll sustain that.

05:17:34 10 MR. LANIER: Yeah, I'll pull it down.

05:17:37 11 Q Ma'am, that was the agreement you had with the DEA,
05:17:40 12 wasn't it?

05:17:40 13 A Yes.

05:17:41 14 Q Next. Let's talk about refusals to fill and red
05:17:48 15 flags.

05:17:54 16 Now, the jury had some questions on this, and I want
05:17:56 17 to make sure I recognize them all.

05:18:03 18 MR. LANIER: Judge, am I allowed to display
05:18:06 19 the juror question on the screen so she can read it, the
05:18:10 20 witness?

05:18:11 21 THE COURT: Okay.

05:18:11 22 MR. LANIER: Thank you.

05:18:12 23 Q "It seems as though there isn't a standardized
05:18:15 24 location where red flags or resolved red flags are
05:18:19 25 documented. Doesn't this make it more difficult for the

05:18:22 1 pharmacists to be able to do their due diligence in a timely
05:18:24 2 manner, especially if notes or prior notes in the system can
05:18:30 3 or are deleted due to space limitations?"

05:18:33 4 Do you see that?

05:18:33 5 **A** Yes.

05:18:34 6 **Q** Let's be clear. There's not a standardized location
05:18:38 7 where all resolved red flags are documented, true?

05:18:42 8 **A** Correct.

05:18:42 9 **Q** And wouldn't you agree it does make it more difficult
05:18:47 10 for the pharmacist?

05:18:48 11 MS. SWIFT: Objection, Your Honor. Could she
05:18:50 12 be allowed to answer the juror's question?

05:18:52 13 MR. LANIER: That's what I'm asking.

05:18:53 14 THE COURT: Why don't you just --

05:18:55 15 Can you answer the question, ma'am?

05:18:56 16 THE WITNESS: Yes. Yes, I can.

05:18:59 17 **A** So, yes, having a standardized process was part of the
05:19:02 18 reason why a target drug good faith dispensing checklist was
05:19:06 19 done. Having notes in the system or notes that can be
05:19:09 20 deleted, you need to understand that controlled substance
05:19:13 21 prescriptions can only be -- they're only valid for a
05:19:16 22 certain period of time. It depends on the state, depends on
05:19:21 23 the regulation in that state, but a controlled substance
05:19:25 24 C-II prescription could expire as soon as seven days or it
05:19:28 25 could be a month or in some cases some states allow it to be

05:19:34 1 longer.

05:19:36 2 If the requirement of the policy is to have a
05:19:43 3 controlled substance -- a note in the prescription for
05:19:45 4 the -- or a note in the computer system for the specific
05:19:48 5 prescription in front of him, a prescription that was, you
05:19:53 6 know, refused or a note about a prescription a year prior
05:19:55 7 could be deleted because that prescription is not even valid
05:19:58 8 anymore.

05:20:00 9 So, yes, I understand your question. You know, it
05:20:05 10 makes sense to have a standardized process, which is what
05:20:08 11 the point of the checklist was supposed to be doing. But
05:20:11 12 also, that there are multiple places in the computer system
05:20:16 13 where a pharmacist would need to perhaps look to ensure that
05:20:20 14 they're doing their good faith, whether there's a health
05:20:24 15 condition with that patient as to why they need those
05:20:27 16 medications, whether or not there's an allergy to
05:20:30 17 medications, all of these are different fields in the
05:20:33 18 computer system.

05:20:35 19 Q So, ma'am, I want to hone in on this part of the
05:20:38 20 question, and I'll ask you this.

05:20:39 21 Doesn't it make it more difficult for the pharmacists
05:20:45 22 to be able to do their due diligence in a timely manner,
05:20:49 23 especially if notes or prior notes in the system can and are
05:20:51 24 deleted due to space limitations?

05:20:55 25 True, right?

05:20:57 1 **A** I would agree that there are different places in the
05:21:00 2 system that a pharmacist might need to look, but they're
05:21:03 3 looking for it for different reasons. And so that was the
05:21:08 4 part of the checklist as well as allowing notes to be put
05:21:11 5 into the computer --

05:21:17 6 **Q** I'm getting notes from both ends asking me to be sure
05:21:20 7 and remember to ask you if 15 minutes is still the metric of
05:21:26 8 time that they're trying to fill this in at the time?

05:21:32 9 **A** I need to explain the 15 minutes.

05:21:34 10 **Q** And I'm going to pause on that, and we'll see if I've
05:21:36 11 got time for that, because I'd like you to. But I've got it
05:21:39 12 in another place in here, so we'll get to it in a minute.
05:21:42 13 Okay? If I've got time.

05:21:45 14 Now, in regards to this, ma'am, there is a need to
05:21:51 15 document red flags, right?

05:21:52 16 **A** That is the best practice, to document red flags if
05:21:56 17 it's a red flag to the pharmacist.

05:21:57 18 **Q** And you don't dispense without documenting the red
05:21:59 19 flag, true?

05:21:59 20 **A** That's what our policy says.

05:22:01 21 **Q** Each red flag must be resolved before dispensing,
05:22:05 22 true?

05:22:05 23 **A** If it's a red flag to the pharmacist, yes.

05:22:07 24 **Q** Now, you've got good faith dispensing policies in
05:22:17 25 place since 1989, true?

05:22:23 1 **A** Yes.

05:22:23 2 **Q** But those dispensing policies were not considered

05:22:28 3 adequate by the DEA under your memorandum of agreement,

05:22:33 4 true?

05:22:34 5 **A** Yes.

05:22:34 6 **Q** And you said prior to 2012 other groups handled the

05:22:40 7 function of your group, right?

05:22:41 8 **A** Yes.

05:22:42 9 **Q** You talked about the loss prevention folks?

05:22:44 10 **A** Yes.

05:22:44 11 **Q** Loss prevention is trying to stop theft, isn't it?

05:22:51 12 **A** That's one of their functions, yes.

05:22:53 13 **Q** That's the main function, isn't it?

05:22:55 14 **A** Yes.

05:22:55 15 **Q** Okay. And then you were asked was this checklist

05:23:03 16 required by law.

05:23:03 17 Do you see that?

05:23:05 18 **A** Yes.

05:23:05 19 **Q** But the truth of the matter is, the checklist was --

05:23:09 20 came out of the agreement terms in the settlement with the

05:23:13 21 law, right?

05:23:14 22 **A** The truth of the matter is is that I needed

05:23:17 23 consistency across all of our stores, and the working team

05:23:21 24 came up with the checklist.

05:23:24 25 **Q** And so we've got that target good faith dispensing

05:23:27 1 checklist, right?

05:23:29 2 **A** Yes.

05:23:30 3 **Q** And down at the bottom it's got this provision, "Per
05:23:37 4 CDC recommendation, Narcan was offered to the patient" --
05:23:43 5 naloxone, excuse me, which is Narcan, right?

05:23:45 6 **A** Yes.

05:23:46 7 **Q** "For CDC recommendation, naloxone was offered to the
05:23:51 8 patient in case of an emergency in these prescriptions,
05:23:55 9 right?

05:23:55 10 **A** Yes.

05:23:55 11 **Q** It was offered not like here's some Narcan, it was
05:23:59 12 offered like would you like to buy some Narcan, right?

05:24:02 13 **A** No, it was what that -- well, correct, they would have
05:24:07 14 to purchase it, yes.

05:24:08 15 **Q** Yeah, in other words, the offer of Narcan, that's an
05:24:13 16 offer to sell Narcan, right?

05:24:14 17 **A** It's an offer to let them know that it's available,
05:24:17 18 that they can choose to get it or not.

05:24:18 19 **Q** Right, in other words, they can buy it or not, right?

05:24:21 20 **A** Yes, or bill it to their insurance, correct.

05:24:23 21 **Q** Right. Well, I mean, one of the jurors asked this
05:24:26 22 question: "Was naloxone offered to patients for free when
05:24:33 23 getting 50 MMEs? If not, how much did it cost?"

05:24:37 24 **A** I don't know the exact cost of Narcan. It is covered
05:24:43 25 on every insurance that I'm aware of, every federally

05:24:46 1 funded, like a Medicaid plan, as well as like a Medicare
05:24:52 2 plan.

05:24:53 3 Additionally, we have -- Walgreens has had on occasion
05:25:01 4 worked with departments of health to help distribute Narcan
05:25:10 5 to members in their community, so the departments of health
05:25:15 6 would give their Narcan to a Walgreens pharmacy and ask them
05:25:24 7 to distribute it to patients who are asking for it, and
05:25:27 8 those would be free of charge.

05:25:29 9 **Q** All right. Fair. Thank you for that further answer.

05:25:37 10 By the way, even insurance, a lot of us have co-pay on
05:25:40 11 our insurance with pharmacies, right?

05:25:43 12 **A** Yes.

05:25:43 13 **Q** It's not like insurance just covers Narcan. You're
05:25:46 14 not saying they cover it with no co-pay?

05:25:48 15 **A** Not all of them do.

05:25:49 16 **Q** All right. Then you showed the jury the 2020 good
05:25:54 17 faith dispensing policy. It's like pages now, isn't it?

05:25:56 18 **A** Yes.

05:25:56 19 **Q** Let's be real clear. You could have done that
05:25:58 20 earlier, couldn't you?

05:25:59 21 **A** Yes, we had a -- we got a new compliance department,
05:26:02 22 and we had a new chief compliance and ethics officer that
05:26:12 23 changed all of our policies to fit into this format.

05:26:15 24 **Q** And this was after we filed this lawsuit, right?

05:26:18 25 **A** Yes, uh-huh.

05:26:18 1 **Q** Excuse me?

05:26:20 2 **A** Yes.

05:26:20 3 **Q** Yes.

05:26:27 4 Now, there's a box --

05:26:29 5 THE COURT: Mr. Lanier, I was hoping we could
05:26:30 6 conclude with this witness today, but it doesn't look like
05:26:34 7 it's going to be possible, so I'm thinking we should break
05:26:37 8 for the evening.

05:26:37 9 MR. LANIER: Yes, sir.

05:26:40 10 THE COURT: All right. Ladies and gentlemen,
05:26:41 11 I appreciate your patience for a long afternoon session. We
05:26:46 12 will break for the evening.

05:26:47 13 Usual admonitions. Don't encounter anything in the
05:26:51 14 media and don't discuss this case with anyone.

05:26:54 15 We'll pick up at 9:00 with the balance of
05:26:56 16 Ms. Polster's testimony. Have a good evening.

05:27:32 17 (Jury excused for the day at 5:27 p.m.)

05:27:33 18 THE COURT: All right. Please be seated for a
05:27:34 19 minute. It's late so I don't want to stay and deal with
05:27:37 20 exhibits.

05:27:37 21 What I'd like -- I'm trying to take it up at 8:45
05:27:41 22 tomorrow, the few exhibits with Mr. Tsipakis, hopefully you
05:27:50 23 can agree on it. I just need to know what's being offered
05:27:54 24 by each side and if there are any objections, the same thing
05:27:56 25 with Captain Villanueva. We'll put Ms. Polster's exhibits

05:27:59 1 off till she's concluded.

05:28:03 2 MR. DELINSKY: Your Honor, may I just request
05:28:05 3 guidance on an issue? It can wait if you'd like to wait
05:28:09 4 till 8:45.

05:28:10 5 THE COURT: If it's quick, what is it?

05:28:13 6 MR. DELINSKY: On the deposition designations,
05:28:14 7 we're bringing very few to Your Honor's --

05:28:18 8 THE COURT: You can be excused, ma'am.

05:28:19 9 THE WITNESS: Thank you.

05:28:20 10 (Witness excused.)

05:28:20 11 MR. DELINSKY: We're bringing very few to Your
05:28:22 12 Honor's attention. When we have overruled objections, we
05:28:28 13 believe they're preserved when the Special Master rules on
05:28:30 14 them, and the vast majority we're not bringing to you, but
05:28:33 15 there's a small number that are important. And out of an
05:28:39 16 abundance of caution, we do want to make a record of them.
05:28:43 17 But we understand they're upsetting to you --

05:28:49 18 THE COURT: They're coming out of the blue. I
05:28:51 19 don't know the context, I mean -- so, and it's almost
05:28:54 20 impossible to -- for me to deal with them in a coherent way.

05:29:01 21 MR. DELINSKY: My question, Your Honor, is
05:29:02 22 what -- because we -- we're hearing you, it is unwieldy.
05:29:08 23 We're trying to find the best process for this. We're
05:29:10 24 really trimming back. We're bringing very few to you.
05:29:15 25 They're the ones that we think are particularly important,

05:29:18 1 and we just want to make sure that on one hand we're
05:29:23 2 protecting our client's interests in making the objections
05:29:27 3 we should, and on the other hand, we're making it easy for
05:29:32 4 you and not introducing another burden.

05:29:33 5 THE COURT: I mean, on those things that I was
05:29:35 6 dealing with earlier today, it's not a big deal either way.
05:29:38 7 There's nothing in there that hasn't been in before, some
05:29:43 8 brief mention about the memorandums of understanding or the
05:29:47 9 settlement agreements. There's nothing new, and it's short.
05:29:51 10 So I don't think it matters, all right?

05:29:53 11 And I don't think the plaintiffs need it, but it's not
05:29:56 12 so -- at this point, it's not prejudicial to have a couple
05:30:01 13 questions on it. But I think it should be streamlined. If
05:30:04 14 there's -- if the reason to have it is that the plaintiffs
05:30:08 15 simply want to point out that this was publicly available to
05:30:12 16 everyone, fine, maybe that can be in one question. It's
05:30:16 17 publicly available.

05:30:17 18 Or maybe we'll have a stipulation that these things
05:30:20 19 were published, everyone knew about them. Clearly everyone
05:30:23 20 knew about them. We've had testimony, everyone -- every
05:30:26 21 defendant knew about everyone else's settlement agreements,
05:30:30 22 all right? Or orders to show cause. They're public.

05:30:32 23 But so if you can come to some agreement, fine. If
05:30:39 24 there's still an objection, I'll deal with it. If it's real
05:30:42 25 important, obviously that's my job, I'll deal with it. I

05:30:45 1 mean, if it takes time, I'll deal with it, I'll simply
05:30:49 2 charge it to both sides like I've been doing, but I will
05:30:51 3 address them, okay? That's how it works. I'm the judge. I
05:30:54 4 understand that.

05:30:54 5 MR. DELINSKY: We'll make every effort to
05:30:56 6 streamline it further.

05:30:57 7 THE COURT: But, you know, if there's
05:30:58 8 something that you can't agree on and it's real important,
05:31:01 9 obviously I'll -- that's -- I'm the judge, I'll do it.
05:31:05 10 However long it takes, I'll do it.

05:31:07 11 MS. SULLIVAN: Your Honor, one other quick
05:31:08 12 thing on scheduling for tomorrow. We had offered
05:31:12 13 Mr. Chunderlik, our former employee, first thing in the
05:31:14 14 morning. He's taken now two days off as I mentioned before
05:31:18 15 because they originally wanted him Tuesday. I would just
05:31:20 16 like to get him on and off tomorrow. I don't know what the
05:31:22 17 plaintiffs --

05:31:23 18 THE COURT: Obviously both sides thought that
05:31:25 19 Ms. Polster would be on and off long before now. But again,
05:31:29 20 I'm not answering the questions on either side -- or asking
05:31:31 21 them, I'm sorry.

05:31:32 22 MR. LANIER: I was asked by the lawyer for
05:31:34 23 Giant Eagle if it would be okay to put him on Tuesday of
05:31:37 24 next week. I'm fine with that. That would be out of -- I
05:31:41 25 will have rested by then. As long as the Court would allow

05:31:46 1 me to keep my case open as to Giant Eagle until after he
05:31:48 2 takes the stand Tuesday, I have no problem doing it on
05:31:51 3 Tuesday.

05:31:51 4 MS. SULLIVAN: Your Honor, we would prefer
05:31:51 5 just putting him on before they rest, and he's ready to go
05:31:51 6 tomorrow. Is there a reason we can't get him on and off
05:31:56 7 tomorrow?

05:31:56 8 MR. LANIER: Yes, as I explained to
05:31:58 9 Ms. Sullivan, I've got two witnesses that have been here for
05:32:00 10 two days that I've got to get on the stand that have been
05:32:02 11 ready to go. And I've got to get them on and off. I
05:32:06 12 just -- if it were just Mr. Chunderlik, that would be fine,
05:32:10 13 but Ms. Sullivan told me she has three hours of direct with
05:32:13 14 him.

05:32:13 15 MS. SULLIVAN: I can cut it down to two.

05:32:14 16 MR. LANIER: Which still means that I wouldn't
05:32:16 17 be able to get my witnesses on and off the stand tomorrow
05:32:18 18 which I need to do to be able to rest.

05:32:20 19 So I just think Tuesday works as long as, Judge,
05:32:24 20 you'll let me --

05:32:25 21 THE COURT: I don't have -- I've said a long
05:32:27 22 time ago that we'll accommodate witnesses and, you know, for
05:32:32 23 whatever reason to take people out of order. So we -- you
05:32:36 24 know, it's a six-week trial, things come up. So --

05:32:42 25 MS. SULLIVAN: Your Honor, my only concern is

05:32:44 1 he shouldn't rest until he puts my witness on, and he's
05:32:48 2 ready to go tomorrow. And if he's on Tuesday, fine, he'd
05:32:52 3 let him rest after he puts our witness on.

05:32:54 4 THE COURT: We're not going to have a gap of a
05:32:59 5 day and a half, Ms. Sullivan, that isn't happening, okay? I
05:33:02 6 don't operate that way. So we're going straight through.
05:33:05 7 We're not taking gaps in the middle of the trial.

05:33:11 8 So it doesn't really matter who's calling who and when
05:33:15 9 they are. The jury's listening to every one and they're
05:33:17 10 going to take everything in regardless of who asks the
05:33:19 11 question, all right?

05:33:20 12 I mean, the plaintiffs are calling, you know,
05:33:22 13 corporate employees in their case, but they could -- you
05:33:27 14 could have called them too, and the order doesn't matter.

05:33:30 15 MS. SULLIVAN: I understand, Your Honor. As
05:33:31 16 long as we can -- it's just been so unfair to this guy who
05:33:34 17 keeps taking days off because the plaintiffs keep changing
05:33:36 18 the day they want him, so I'm just asking that he be --

05:33:39 19 THE COURT: Look, Ms. Sullivan, I don't think
05:33:44 20 Mr. Lanier has been trying to disrupt Mr. Chunderlik's life.
05:33:48 21 Okay? Everyone thought that this witness was going to be on
05:33:49 22 and off by now. I'm not blaming anyone. The testimony took
05:33:52 23 longer.

05:33:53 24 MS. SULLIVAN: Your Honor, he had asked for
05:33:54 25 him on Tuesday, then they changed their mind, but I

05:33:55 1 understand Your Honor's ruling.

05:33:56 2 The only other point, Your Honor, in fairness, I'm
05:33:58 3 hoping that if we get juror questions in the defense case,
05:34:01 4 we'll get to ask the questions as opposed to plaintiffs'
05:34:04 5 lawyers?

05:34:05 6 There is a fairness issue that the juror -- you know,
05:34:07 7 with the plaintiffs appearing to be helping the jurors by
05:34:09 8 asking their questions, and so a way to remedy that is that
05:34:13 9 we do it in the defense case.

05:34:16 10 THE COURT: Look, I will simply -- Mr. Lanier
05:34:18 11 got up first. I mean, he might have asked them.

05:34:21 12 MS. SULLIVAN: But it's been that way
05:34:22 13 throughout his case, Your Honor, and there is a basic
05:34:25 14 fairness issue in terms of appearance.

05:34:26 15 THE COURT: Well, it's going to be the other
05:34:28 16 way around, Ms. Sullivan, when it's your side because you'll
05:34:30 17 be up first.

05:34:31 18 MS. SULLIVAN: That was my only question, Your
05:34:33 19 Honor. Thank you, Your Honor.

05:34:34 20 MR. LANIER: I'm not going to be fussy about
05:34:36 21 that.

05:34:36 22 THE COURT: No. You will be up first on
05:34:39 23 redirect, so you'll have the first crack at asking the
05:34:41 24 questions. That's the way it works.

05:34:42 25 MS. SULLIVAN: Thank you, Your Honor.

05:34:42 1 MR. LANIER: In that regard, Your Honor, if I
05:34:43 2 could take one more minute of your time.

05:34:45 3 I have at this point marked with a Post-it Note, a
05:34:49 4 little sticky, the three questions I think I've asked. I
05:34:52 5 may have asked a couple more, but they're several questions
05:34:55 6 on a page. I'm not just not sure. I've talked to
05:34:58 7 Ms. Swift. What we would ask the Court jointly is could we
05:35:02 8 leave the originals with Mr. Pitts but could we take
05:35:06 9 pictures of them so that we're both able to work on them
05:35:09 10 tonight?

05:35:09 11 THE COURT: Sure, you can copy, sure.

05:35:11 12 MR. LANIER: Thank you, Your Honor.

05:35:12 13 MS. SWIFT: Thank you, Your Honor.

05:35:17 14 THE COURT: All right. And today, I had 3 1/2
05:35:19 15 hours for each side by my computation, so --

05:35:22 16 MR. LANIER: Judge, I have tried cases from
05:35:24 17 coast to coast. I've never met a harder working judge. You
05:35:27 18 get seven hours of testimony in a day, that's like a record.

05:35:31 19 THE COURT: I mean, my commitment to you --
05:35:34 20 everyone's working real hard -- my commitment to you and my
05:35:37 21 commitment to the jury is that whatever other court business
05:35:39 22 I have I squeeze into the noon hour. And I had two matters
05:35:44 23 during the noon hour, so --

05:35:46 24 MR. LANIER: I've never seen this before.
05:35:48 25 It's killing me, but I'm in respect and awe.

05:35:52 1 THE COURT: I appreciate that, Mr. Lanier. I
05:35:55 2 think it --

05:35:55 3 MR. LANIER: It's crazy.

05:35:57 4 THE COURT: The smoother this goes, the more
05:36:00 5 the jury is able to focus and keep their attention, and I
05:36:02 6 think that's the fairest to the plaintiffs and to the
05:36:05 7 defendants.

05:36:05 8 MR. LANIER: Both sides, that's right.

05:36:06 9 THE COURT: It's my experience as a trial
05:36:08 10 lawyer which I had 22 years of.

05:36:10 11 Okay. Have a good evening.

05:36:13 12 COUNSEL EN MASSE: Thank you, Your Honor.

05:36:13 13 (Proceedings adjourned at 5:36 p.m.)

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15 C E R T I F I C A T E

16
17 I certify that the foregoing is a correct transcript
18 of the record of proceedings in the above-entitled matter
19 prepared from my stenotype notes.

20

21 /s/ Lance A. Boardman

10-20-2021

22 Lance A. Boardman, RDR, CRR

DATE

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